TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1908

No. 92

ROLAND CAMARA, APPELLANT,

vs.

MUNICIPAL COURT OF THE CITY AND COUNTY OF SAN FRANCISCO.

APPEAL FROM THE DISTRICT COURT OF APPEAL OF CALIFORNIA, FIRST APPELLATE DISTRICT

FILED MARCH 26, 1908

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SUPREME COURT OF THE UNITED STATES

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[fol. A]

DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA, THE FIRST APPELLATE DISTRICT

ROLAND CÁMARA, Plaintiff,

vs.

THE MUNICIPAL COURT OF THE CITY AND COUNTY OF SAN FRANCISCO, Defendant.

Clerk's Transcript

On Appeal from Judgment of the Superior Court of the State of California, in and for the City and County of San Francisco, Honorable Joseph Karesh, Judge.

[fol. 3]

IN THE SUPERIOR COURT OF CALIFORNIA IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

PETITION FOR WRIT OF PROHIBITION—
Filed February 21, 1964

To the Honorable Judges of the Superior Court of the City and County of San Francisco:

The undersigned petitioner petitions this Honorable Court for the issuance of a writ of prohibition directed to the respondent above named, and, as grounds therefor, alleges:

I

Petitioner is a resident of the City and County of San Francisco and resides, and at all times herein pertinent resided, at 223 Jones Street in that city. Petitioner's residence is one of sixteen apartments in said building.

II

On or about November 6, 1963, petitioner at his residence was visited by William Nall, Food and Environmental Health Inspector for the Department of Public Health of the City and County of San Francisco. Nall asked petitioner for permission to inspect his apartment. Petitioner asked Nall if he had a warrant authorizing his admission or any complaint showing any reason for the inspection. Nall stated that he had no warrant nor had there been any complaint concerning petitioner's apartment but that the law allowed him to make an inspection without a warrant and without a complaint as to the premises to be inspected. [fol. 4] Petitioner declined to allow Nall entrance to his apartment and the apartment was not inspected by Nall.

III

On or about November 22, 1963, petitioner at his residence was visited by John M. Reid, Principal and Environmental Health Inspector, Department of Public Health, City and County of San Francisco, and William Nall. Reid asked petitioner's permission to make an inspection of his apartment and stated that they had no warrant or complaint, and that said inspection was a part of the "routine" inspection program of the Department of Public Health. Petitioner again declined to give his permission for an inspection of his apartment and no inspection was made.

IV

On or about December 2, 1963, petitioner was arrested by officers of the San Francisco Police Department on the charge of violating section 507 of the San Francisco Municipal Housing Code. Petitioner was booked and incarcerated in San Francisco City Prison. On the same day petitioner was released from jail on the posting of $110 cash bail.

V

On or about December 10, 1963, a complaint was filed in respondent Municipal Court under the number H 72647 charging petitioner with a misdemeanor in that he violated section 507 of the Municipal Housing Code by opposing the execution of section 503 of the Municipal Housing Code. [fol. 5] Said complaint was signed and sworn to by William Nall and charged that the offense was committed on or about November 22, 1963. A true copy of said complaint is attached to this petition as "Exhibit A" and incorporated herein as if set out here in full. Copies of sections 503 and 507 of the Municipal Housing Code are attached hereto as "Exhibit B."

VI

On or about December 17, 1963, petitioner, by his counsel, filed a demurrer to said complaint in respondent court. Said demurrer alleged the complaint did not state facts sufficient to constitute a public offense because section 503 of the Municipal Housing Code is unconstitutional and void as in conflict with Article I, sections 1 and 19 of the Constitution of the State of California and the 14th Amendment to the Constitution of the United States. A true copy of said demurrer is attached to this petition as "Exhibit C" and incorporated herein as if here set out in full.

VII

On or about December 27, 1963, said demurrer was argued before the Honorable Elton Lawless, a judge of respondent Municipal Court, and submitted for a decision. On the same date said demurrer was overruled by Judge Lawless and petitioner required to enter his plea to the charge of the complaint.

VIII

On December 27, 1963, petitioner entered a plea of "not [fol. 6] guilty" to the charge of violating section 507 of the Municipal Housing Code and demanded a jury trial.

IX

Section 503 of the Municipal Housing Code is unconstitutional on its face as authorizing an invasion by government officials of a private residence without warrant and without any showing of probable cause.

X

The respondent Municipal Court is without jurisdiction to proceed to try petitioner under the complaint referred to in paragraph V, above, for the reasons stated in paragraph IX, above. Nevertheless respondent threatens to proceed with said trial and will proceed with said trial unless restrained by this court.

XI

Petitioner has no plain, speedy or adequate remedy at law to protect him from said trial and therefore prays that this Court do as follows:

1. Issue its order requiring respondent Municipal Court to sustain the demurrer and dismiss Complaint No. H 72647 or, in the alternative, show cause before this Court at a time and place to be fixed why it should not be forever restrained and prohibited from proceeding with the trial of Complaint H 72647, or taking any action therein except to dismiss said complaint.

2. For such other and further relief as may seem just [fol. 7] and proper in the premises and for costs of this suit.

Marshall W. Krause, Attorney for Petitioner.

Duly sworn to by Roland Camara, jurat omitted in printing.

EXHIBIT A TO PETITION

Action No.	Defendants	Violation	11 Dept.
H 72647	ROLAND CAMARA	507 Mun. Hsg. Code	12

THE PEOPLE OF THE STATE OF CALIFORNIA VS.
THE DEFENDANT/S ABOVE NAMED

IN THE MUNICIPAL COURT IN THE
CITY AND COUNTY OF SAN FRANCISCO
STATE OF CALIFORNIA

Filed

.....
Clerk of the
Muncipal Court

By .....
Deputy Clerk

COMPLAINT

State of California)
) ss.
CITY AND COUNTY OF SAN FRANCISCO)

[fol. 8] WILLIAM NALL being duly sworn deposes and says on information and belief that the said defendant did in the City and County of San Francisco, State of California, on or about the 22d day of November, A.D. 1963, commit the crime of MISDEMEANOR to-wit: Violating Section 507 of the Municipal Housing Code in that said defendant, the owner, lessee and authorized agent, did neglect, refuse, resist and oppose the execution of Section 503 of the Municipal Housing Code to wit, allow authorized public health inspectors in the performance of their duties and the presentation of proper credentials to enter at a reasonable time a building structure or premises in this city, to perform their duly imposed duty.

/s/ WILLIAM NALL
Address: Dept. Public Health
Telephone *101 Grove St.*
UN 1 4701

Subscribed and sworn to before me on
November 26, 1963

Walter Varakin
Deputy District Attorney,
City and County of San Francisco,
State of California.
Stat.

EXHIBIT B TO PETITION

Sec. 503 RIGHT TO ENTER BUILDING. Authorized employees of the City departments or City agencies, so far as may be necessary for the performance of their duties, shall, upon presentation of proper credentials, have the right to enter, [fol. 9] at reasonable times, any building, structure, or premises in the City to perform any duty imposed upon them by the Municipal Code. (see Article 18.)

Sec. 507 PENALTY FOR VIOLATION. Any person, the owner or his authorized agent who violates, disobeys, omits, neglects, or refuses to comply with, or who resists or opposes the execution of any of the provisions of this code, or any order of the Superintendent, the Director of Public Works, or the Director of Public Health made pursuant to this Code shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars ($500.00), or by imprisonment, not exceeding six (6) months or by both such fine and imprisonment, unless otherwise provided in this Code, and shall be deemed guilty of a separate offense for every day such violation, disobedience, omission, neglect or refusal shall continue. Any person who shall do any work in violation of any of the provisions of this Code, or any order of the Superintendent, the Director of Public Works, or the Director of

Public Health made pursuant to this Code, and any person having charge of such work who shall permit it to be done, shall be liable to the penalty provided. (See Article 18.)

[fol. 10]

EXHIBIT C TO PETITION

MARSHALL W. KRAUSE
Staff Counsel
American Civil Liberties Union
of Northern California
503 Market Street
San Francisco 5, California
EXbrook 2-4692

Attorney for Defendant

IN THE MUNICIPAL COURT OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA

H 72647—Dept 12

PEOPLE OF THE STATE OF CALIFORNIA,

v.

ROLAND CAMARA, Defendant.

DEMURRER TO COMPLAINT

Comes now the defendant above-named and demurrers to the complaint filed against him in the above case on the following ground and supported by the attached Points and Authorities.

Said complaint does not state facts constituting a public offense in that the section of the Municipal Housing Code which defendant is alleged to have resisted, to wit: Section 503, is unconstitutional and thus null, void and of no effect.

It follows that the complaint on its face does not allege a violation of Municipal Housing Code Section 507.

DATE: December 16, 1963

M W K
MARSHALL W. KRAUSE
ATTORNEY FOR DEFENDANT

[fol. 11]

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION

I

Prohibition Is the Appropriate Remedy

When a Court has acted or threatens to act in excess of its jurisdiction prohibition is the appropriate method to restrain further action.

C.C.P. §1102.

Where an ordinance or statute is claimed to be unconstitutional, prohibition is the proper remedy where the trial court asserts its continuing jurisdiction after a challenge to the ordinance or statute calling the attention of the Court to the alleged constitutional defect.

Whitney v. *Municipal Court,* 58 Cal.2d 907, 911 (1962).
Kelly v. *Municipal Court,* 160 C.A.2d 38.

A demurrer to a criminal complaint on the basis that the statute the defendant is charged with violating is unconstitutional is a sufficient challenge to the jurisdiction of the court so that prohibition will lie.

Moore v. *Municipal Court,* 170 C.A.2d 548, 552 (1959).

A requirement that a defendant in a criminal case stand trial in a court which acts without or in excess of its jurisdiction would be an imposition of personal hardship upon [fol. 12] the defendant and a futile expense to the public. In such cases, the right to appeal from a subsequent judg-

ment is an inadequate remedy and a writ of prohibition will lie.

Moore v. *Municipal Court,* 170 C.A.2d 548, 552 (1959).
Hunter v. *Justices Court,* 36 Cal.2d 315 (1950).
Rescue Army v. *Municipal Court,* 28 Cal.2d 460, 464-465 (1946).
Glasser v. *Municipal Court,* 27 C.A.2d 455 (1938).
Alves v. *Justice Court,* 148 C.A.2d 419.
3 Witkin "California Procedure," pp. 2513-2515.

II

The Constitutionality of Section 503

Section 503 of the Municipal Housing Code is unconstitutional on its face since it authorizes a city employee to enter, in the course of his duties, a private home without any showing of emergency, probable cause of a violation of law, or that there is a condition on the premises requiring inspection. Nor is the right granted to the city employee under section 503 conditioned on obtaining a warrant. The statute thus authorizes a violation of the petitioner's constitutional protection against unreasonable search and invasion of the privacy of his home.

The right to be free of an unreasonable search is not limited merely to the exclusion of evidence obtained illegally from criminal trials. A taxpayer may obtain an injunction against the expenditure of public funds for an [fol. 13] unreasonable search. This is the holding of *Wirin* v. *Horrall,* 85 C.A.2d 497, where a "routine search" of automobiles was found enjoinable. The Court held at page 502:

> "The reasons for adoption of the Fourth Amendment and Article I, Section 19, of the California Constitution, must be continually borne in mind if we are to preserve the individual liberties of citizens of this country and state. To safeguard the rights and liberties set forth in our Federal and State constitutions, such rights must be strictly enforced, otherwise we will

gradually whittle away our liberties and destroy our form of government with the inevitable result that there will be substituted a despicable form of totalitarianism."

If the right to privacy is interfered with by police officers who enter a hotel room without probable cause and without a warrant, the occupants of the room may obtain damages for the violation of their rights. This is the holding of *Ware* v. *Dunn,* 80 C.A.2d 936, where the court stated at page 942:

"As a first ground of appeal, it is earnestly asserted that the conduct of appellants (in entering plaintiffs' hotel room without permission) did not violate any of the asserted rights of respondents. With this we cannot agree. The right of people to be secure in their homes against unreasonable searches and seizures is guaranteed by both the Federal and State constitutions [fol. 14] (Const. U.S. 4th Amendment; Cal. Const., Art. 1, Sec. 19). The inviolability of this guarantee cannot be impaired or destroyed under the guise or pretext of "making an investigation," by those clothed with official authority."

The Court in *Ware* v. *Dunn* went on to state at page 945:

"From time immemorial the most conspicuous feature of history has been the struggle between liberty and authority. Today, as in ages past, we are not without tragic proof that the exacted power of some governments to ignore the inalienable rights of the individual to liberty and to resort to lawless enforcement of the law, is the handmaiden of tyranny. No higher authority, no more solemn responsibility, rests upon the courts than to maintain the constitutional and statutory shields planned and inscribed to preserve liberty under law and to protect each individual from oppression and wrong, from whatever source it may emanate."

The primacy of these principles is well established in California where it is the rule that a search made without a warrant is prima facie illegal and the searcher then has the burden of proof to justify it. See *People* v. *Haven,* 59 A.C. 738, 742. In contrast, Section 503 of the Municipal Housing Code purports to grant to City & County employees the right to search without any justification whatsoever.

[fol. 15] In closing this discussion of general principles, we wish to cite a venerable but virile and enlightening precedent, *Boyd* v. *United States,* 116 U.S. 616 (1886). The Court there held a federal statute repugnant to the Fourth Amendment and traced the background of that amendment. In summing up the Court stated, at page 630:

> "The principles laid down in this opinion affect the very essence of constitutional liberty and security. They reach farther than the concrete form of the case then before the Court, with its adventitious circumstances; they apply to all invasions on the part of the government and its employees, of the sanctity of a man's home and the privacies of life. It is not the breaking of his doors and the rummaging of his drawers that constitutes the essence of the offense; but it is the invasion of his indefeasible right of personal security, personal liberty and private property, where that right has never been forfeited by his conviction of some public offense; . . . "

In this case the respondent municipal court has failed to recognize the absolute sanctity and privacy of the home in the absence of some over-riding governmental interest to defeat that sanctity. It has authorized a "routine" search by health inspectors without any showing or allegation of a necessity for that search. Such a practice seems authorized by Section 503, and thus the section itself must be struck [fol. 16] down as unconstitutional.

III

Judicial Decisions on Searches by Health Inspectors

Petitioner has been unable to find any California case involving health inspectors and the right to make "routine" or any other kind of searches. The United States Supreme Court has had two such cases before it, *Frank v. Maryland,* 359 U.S. 360, and *Ohio* v. *Price,* 364 U.S. 263. In both of these cases, convictions for failure to allow inspection of private premises were affirmed by a sharply divided vote. In *Frank* v. *Maryland,* the Court split five to four and in *Ohio* v. *Price,* the conviction was affirmed by an equally divided Court, one Justice not participating. Petitioner takes the position that these cases are distinguishable, and if not distinguishable, erroneous, and if not erroneous, not binding since Petitioner's position is supported by the independent ground of his right to be free of unreasonable searches under the California Constitution.

The statute involved in *Frank* v. *Maryland,* reads as follows:

> "Whenever the Commissioner of Health shall have cause to suspect that a nuisance exists in any house, cellar or enclosure, he may demand entry therein in the daytime, and if the owner or occupier shall refuse or delay to open the same and admit a free examination, he shall forfeit and pay for every such refusal the sum of [fol. 17] twenty dollars."

It will be noted that the statute requires cause to be shown to justify a demand for inspection. The San Francisco statute has no such requirement. A second distinction is that the evidence in *Frank* v. *Maryland* clearly indicated the existence of probable cause to make an inspection. The majority opinion stated (359 U.S. at 366):

> "Valid grounds for suspicion of the existence of a nuisance must exist. Certainly the presence of a pile of filth in the backyard combined with a run-down condition of the house, gave adequate grounds for such suspicion."

In our case there was no complaint, or no suspicion of any cause which might require correction, or not be in conformity with the health standards of the City and County of San Francisco.

A third ground for distinguishing the majority opinion in *Frank* v. *Maryland* is the precedent-shattering decision in *Mapp* v. *Ohio,* 367 U.S. 643. That case held that the exclusionary rule for evidence seized in violation of the Fourth Amendment was a part of the Fourth Amendment and binding on the States by virtue of the Fourteenth Amendment. The Court stated that the Fourteenth Amendment rights in the area of privacy are strictly parallel to Fourth and Fifth Amendment rights in this respect, as the following quotation illustrates (367 U.S. at 656-657):

> [fol. 18] "This Court has not hesitated to enforce as strictly against the States as it does against the Federal Government the rights of free speech and of a free press, the rights to notice and to a fair public trial, including as it does, the right not to be convicted by use of a coerced confession, however logically relevant it be, and without regard to its reliability. *Rogers* v. *Richmond,* 365 U.S. 534. * * * We find that as to the Federal Government, the Fourth and Fifth Amendments and, as to the States, the freedom from unconscionable invasions of privacy and the freedom from convictions based upon coerced confessions do enjoy an "intimate relation" (footnote omitted) in their perpetuation of "principles of humanity and civil liberty (secured) . . . only after years of struggle." *Bram* v. *United States,* 168 US 532, 543, 544 (1897). They express supplementing phases of the same constitutional purpose—to maintain inviolate large areas of personal privacy." *Feldman* v. *United States,* 322 U.S. 487, 489, 490."

In contrast to this holding of parallelism between the Fourth and Fourteenth Amendments in the area of privacy,

the majority opinion in *Frank* v. *Maryland,* (decided two years before Mapp vs. Ohio) took a more restricted view of the Fourteenth Amendment. It was there stated by Justice Frankfurter that the historic nub of the Fourth Amendment was protection against search for evidence of *criminal* [fol. 19] violation and that this concept is the one which is "implicit in ordered liberty," and thus incorporated in the Fourteenth Amendment. Since *Frank* v. *Maryland* did not involve the search for evidence of criminal violation, the right of privacy of the Fourteenth Amendment was held not to have been invaded by the health officers' demand for entry.

The Frankfurter concept of the Fourteenth Amendment has now been left behind by *Mapp* v. *Ohio* and it is clear that the whole of the Fourth Amendment protections is binding upon the States. And it is equally clear that the Fourth Amendment's guarantees against unreasonable search and seizure are not limited to searches for evidence of criminal violation. This was established as early as *Ex parte Jackson,* 96 U.S. 727, 24 L. Ed. 877 (1877), where the Court held the Post Office could not open sealed letters without a search warrant.

The decision in *Ohio* v. *Price,* 364 U.S. 263, need not be discussed since it was affirmed by an equally divided court and accordingly the judgment is without force as precedent. *The Antelope* (U.S.) 10 Wheat 66, 126 L. Ed. 268, 282; *Etting* v. *Bank of the United States,* (U.S.) 11 Wheat 78, 6 L. Ed. 419, 423.

We wish to close this brief with a citation to *District of Columbia* v. *Little,* 178 F.2d 13 (1949), which was decided before *Frank* v. *Maryland* and conflicts with that opinion. In the *Little* case, the situation was much stronger against [fol. 20] the defendant than it is against the petitioner in this case. The evidence showed that a complaint had been made of an accumulation of garbage on the premises to be inspected and the regulation of the District of Columbia under which the inspection was authorized required that probable cause exist. Yet the Court of Appeals for the

District of Columbia refused to uphold the conviction. It stated (178 F.2d 13, 17:)

> "To say that a man suspected of crime has a right to protection against search of his home, without a warrant, but that a man not suspected of crime has no such protection, is a fantastic absurdity.
>
> "The argument involves a basic error in reasoning in respect to the Constitution's Bill of Rights. The Fourth Amendment did not confer a right upon a people. It was a precautionary statement of a lack of Federal Government power, coupled with a rigidly restricted permission to invade the existing right. The right guaranteed was a right already belonging to the people. The reason for the search warrant clause was that public interest required that personal privacy be invadable for the detection of crime and the Amendment provided the sole and only permissible process by which the right of privacy could be invaded. To view the Amendment as a limitation upon an otherwise unlimited right of search is to invert completely the true [fol. 21] posture of rights and the limitations thereon.
>
> "• • •
>
> "We emphasize that no matter who the officer is, or what his mission, a government official cannot invade a private home unless (1) a magistrate has authorized him to do so, or (2) an immediate major crisis in the performance of duty affords neither time nor opportunity to apply to a magistrate. This right of privacy is not conditioned upon the objective, the prerogative, or the stature of the intruding officer. His uniform, badge, rank, and the Bureau from which he operates are immaterial. It is immaterial whether he is motivated by the highest public purpose, or the lowest personal spite."

Petitioner submits the same result is reached under California law.

Respectfully submitted,

Marshall Krause, Attorney for Petitioner.

IN THE SUPERIOR COURT

ORDER GRANTING ALTERNATIVE WRIT—February 21, 1964

On reading the verified petition filed in the above cause, and finding good cause therein,

[fol. 22] ~~It Is Ordered that an alternative writ of prohibition issue out of and under the seal of this Court directed to the above respondent (and commanding it to sustain the demurrer and dismiss the complaint in case No. H 72647,)~~ G.S.L.

Or To Show Cause by written return or answer or otherwise in the courtroom of Department *16* thereof on the *5th* the Complaint day of March, 1964 at the hour of 2 P.M. why ~~it has not~~ in G.S.L. ~~done so~~. Action No. H62646, *People* v. *Camara,* should not be dismissed.

It Is Further Ordered that a copy of said petition be served with said alternative writ and that copies of the papers served also be served on the real party in interest above named ten days prior to the hearing on the order to show cause.

It Is Further Ordered that said alternative writ command respondent Municipal Court to refrain from setting case No. H72647 for trial or taking any other steps or proceedings in said action until further order of this Court.

Date: February 21, 1964.

Gerald S. Levin, Judge of the Superior Court.

IN THE SUPERIOR COURT

ALTERNATIVE WRIT OF PROHIBITION—February 21, 1964

[fol. 23]

The People of the State of California Send Greetings to the Above-named Respondent:

Whereas It Manifestly Appears in the verified petition filed by Roland Camara that you threaten to exceed your jurisdiction by bringing to trial Action No. H 72647 against him, and whereas petitioner has no plain, speedy and adequate remedy in the ordinary course of law,

Therefore, we do command you, the said respondent, to ~~sustain the demurrer to the complaint and dismiss the complaint in Action No. H 72647 titled People v. Camara, Or, in default thereof, that you~~ G.S.L. show cause by written return or answer or otherwise before this Court in the courtroom of Department *16* thereof on the *5th* day of *March*, 1964, at the hour of 2 P.M. why ~~you have not done so.~~ the Complaint in Action No. G.S.L. H 72647, *People* v. *Camara*, should not be dismissed.

We Further Command you, the said respondent, to refrain from setting case No. H 72647, People v. Camara, for trial or taking any other steps or proceedings in said action until further order of this Court.

Witness the Honorable *Gerald S. Levin* Judge of the above Superior Court.

Attest my hand and seal of said Court this *21st* day of February, 1964.

Martin Mongan, Clerk, by F. G. Thomas, Deputy.

[fol. 24]

IN THE SUPERIOR COURT

ANSWER TO PETITION FOR WRIT OF PROHIBITION—
Filed March 4, 1964

Respondent respectfully submits that the only legal issue presented to this Honorable Court for its consideration by the petition is whether or not Section 503 of the San Francisco Municipal Housing Code is unconstitutional on its face, as alleged in paragraph IX of said petition. Respondent urges, therefore, that petitioner's statement of facts set forth in said petition relating to events preceding the petitioner's arrest is obviously irrelevant and immaterial to said issue. However, since petitioner has seen fit to allege the existence of certain factual matters, it would appear that respondent is obliged to answer said allegations, and does so as follows:

I

Answering the allegations of paragraph I, respondent denies that "Petitioner's residence is one of sixteen apartments in said building." The petitioner occupies a portion of the ground floor of a three story apartment building situated at 225 Jones Street in San Francisco. Under the existing permit of occupancy issued by the Department of Public Health of the City and County of San Francisco the entire ground floor of said apartment building is restricted to commercial use and is not authorized for resi- [fol. 25] dential occupancy. The permit of occupancy does authorize 16 apartment units in the building but it specifically sets forth that eight of said apartments shall be on the second floor of the building and the other eight shall be on the third floor. It is interesting to note that petitioner admits residing on the premises in question. Clearly said residence is illegal and is not one of sixteen apartments in said building as alleged.

II

Answering the allegations of paragraph II, respondent denies that petitioner asked Inspector Nall on November 6, 1963, if he had any complaint showing any reason for the inspection, or that Inspector Nall stated to petitioner that there had been no complaint concerning petitioner's apartment. Inspector Nall went to the premises on that day to make a routine annual inspection of the premises pursuant to Section 86, Part III of the San Francisco Municipal Code, which provides in part that the Bureau of Housing Inspection of the Department of Public Health shall make an inspection of every apartment house in San Francisco at least once a year for the purpose of licensing said apartment house and issuing a permit of occupancy. Upon his arrival at the premises, Inspector Nall spoke to the manager of the apartment house who informed him that the lessee of the store at 223 Jones Street, on the ground floor of the apartment building, was living in the rear of the [fol. 26] store. Inspector Nall questioned petitioner about his alleged occupancy of the rear of the store as a residence, and the petitioner affirmed that he was in fact living in the rear of the store. Inspector Nall requested permission to enter and inspect the premises, but petitioner refused. Inspector Nall returned to the premises again on November 8, 1963, and requested permission from petitioner to enter and inspect the premises, but petitioner refused.

III

Answering the allegations of paragraph III, respondent denies that Inspector John Reid stated to petitioner on November 22, 1963, that he had no complaint and that the inspection requested was part of the "routine" inspection program of the Department of Public Health. Subsequent to the refusal of petitioner to admit Inspector Nall on November 6 and November 8, a citation was mailed to the petitioner at 223 Jones Street to appear in the District Attorney's office on November 22 to show cause why a war-

rant should not be issued for his arrest for violation of Section 507 of the Municipal Housing Code. Petitioner failed to appear at the scheduled hearing in response to the citation. That afternoon, Inspector Reid and Inspector Nall went to the petitioner's premises at 223 Jones Street and requested permission to enter and inspect the premises. Inspector Reid informed petitioner that it was the legal responsibility of the Health Department to make an in- [fol. 27] spection of every apartment house in San Francisco once a year to see that it complied with the Municipal Housing Code, and that the occupancy complied with the permit of occupancy issued by the Department of Public Health the previous year. Inspector Reid further informed petitioner that the existing permit of occupancy authorized eight apartment units each on the second and third floors of the building, but that the ground floor was authorized for commercial use only. He also informed petitioner that it was illegal for him to occupy the premises as a residence. He requested permission to enter and inspect the premises, but petitioner refused them permission to enter.

IV

Respondent generally denies the allegations set forth in paragraph IX of said petition. The question of the constitutionality of Section 503 of the Municipal Housing Code is discussed in the attached Memorandum of Points and Authorities.

V

Respondent generally denies the allegations set forth in paragraphs X and XI of the petition, and respectfully requests that the petition be denied.

Dated this 4th day of March, 1964.

Respectfully submitted,

Thomas C. Lynch, District Attorney, By Frank W. Shaw, Assistant District Attorney.

[fol. 28]

MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PETITION FOR WRIT OF PROHIBITION

A municipality has the power to enact local police, sanitary, and other regulations which are not in conflict with general laws (California Constitution, Art. 11, Sec. 11). Local ordinances must not be unreasonable, arbitrary or discriminatory and must bear a rational relationship to the object sought to be accomplished (*Laurel Hill Cemetery* v. *City and County of San Francisco,* 152 Cal. 464; 30 S.Ct. 301; *Skaggs* v. *City of Oakland,* 6 Cal.2d 222).

It is necessary that the means adopted in an ordinance must be reasonably related to the desired end (*In re Mathews,* 191 Cal. 35). In general, the test is whether the ordinance benefits the community's health and welfare, and whether the means selected for this purpose are reasonably necessary to accomplish the desired result without undue oppression of personal rights (*Justensen's Food Stores, Inc.* v. *Tulare,* 12 Cal.2d 324).

Section 503 of the Housing Code of the City and County of San Francisco provides:

> "Right to enter building. Authorized employees of the City departments or City agencies, so far as may be necessary for the performance of their duties, shall, [fol. 29] upon presentation of proper credentials, have the right to enter, at reasonable times, any building, structure, or premises in the City to perform any duty imposed upon them by the Municipal Code."

There is no doubt that the above section was enacted under the authorized police powers of the city for the purpose of preserving the public health of its inhabitants. In order to accomplish this end it is necessary that health inspectors possess the right to enter a building to determine there exists conditions detrimental to public health.

The Supreme Court of the United States in the case of *Frank* v. *Maryland,* 359 U.S. 360; 3 L.Ed. 2d 877, upheld the right of a city health inspector to enter premises without a search warrant for the purpose of discovering a nuisance therein. The ordinance in that case provided for entry by the health inspector into any house in the daytime where he has cause to suspect the existence of a nuisance.

The Supreme Court held that the Fourth Amendment guaranteeing individual rights to be free from unreasonable search and seizure was not violated where the search was merely to determine if conditions exist which are violative of local health code regulations. The requested entry was not intended to discover criminal evidence, such as would jeopardize an individual's right under the Fifth Amendment. Rather, the inspection was intended to discover conditions which violate local health laws and where so dis- [fol. 30] covered the owner is directed to remedy the condition. "No evidence for criminal prosecution is sought to be seized."

The Supreme Court in the *Frank* case upholds not only the right to enter premises without a search warrant where there is cause to believe a nuisance exists, but, in addition, authorizes a general area-by-area health inspection without the necessity of a search warrant. The court in its opinion said:

> ". . . Time and experience have forcefully taught that the power to inspect dwelling places, either as a matter of systematic area-by-area search or, as here, to treat a specific problem, is of indispensable importance to the maintenance of community health; a power that would be greatly hobbled by the blanket requirement of the safeguards necessary for a search of evidence of criminal acts. The need for preventive action is great, and city after city has seen this need and granted the power of inspection to its health officials; and these inspections are apparently welcomed by all but an insignificant few. Certainly, the nature of our society has not vitiated the need for inspections

first thought necessary 158 years ago, nor has experience revealed any abuse or inroad on freedom in meeting this need by means that history and dominant public opinion have sanctioned." (359 U.S. 360, 372.)

In the case of *District of Columbia* v. *Little*, 178 Fed. [fol. 31] 2d 13, the United States Court of Appeals held that a property owner could resist entry of health inspectors without a search warrant for the reason that the Fourth Amendment prohibits unreasonable search and seizure. Judge Holtzoff argues in his dissenting opinion in the *Little* case that the Fourth Amendment is applicable only where the search and seizure is incidental to discovery of evidence in a criminal proceeding or in an action to enforce a penalty and does not apply to inspections where no seizure is intended. Judge Holtzoff also reasons that the personal rights secured by the Bill of Rights are not absolute or unqualified. These rights are subject to reasonable police power regulations. He states at page 968:

"... The personal rights accorded to the individual by the first Ten Amendments are not, however, absolute and unqualified. For example, the right of freedom of speech is limited by the prohibition against publication of obscene material, against incitement to crime, and against the creation of public disorder. Mr. Justice Holmes, in his inimitable manner, observed that in the exercise of the right of freedom of speech, no one may rise in a crowded theater any yell 'Fire!' Similarly, the right of freedom of religion does not permit, in the name of worship, acts that are regarded as illegal, immoral, or offensive. In the same way, the sanctity of the home is not absolute. For example, it [fol. 32] is not disputed that representatives of the local government may enter a home if one of its inhabitants is afflicted with a serious contagious disease that constitutes a menace to the community. Representatives of the Fire Department require no search warrant to enter a house in order to extinguish a blaze,

even if the owner objects to their presence. In many instances, it is proper for public authorities to enter a building to suppress a nuisance, such as a noisy gathering disturbing the peace of the neighborhood. A law enforcement officer may enter a house without a warrant in order to arrest a person who he has reasonable grounds to believe has committed a felony. The law has always recognized that the sanctity of the home is not absolute, but is subject to certain limitations.

"The right of inspection in the interest of public safety and public health is one of these qualifications."

The United States Supreme Court granting certiorari in the *Little* case affirmed the United States Court of Appeals decision without deciding the constitutional question of searches and seizures by health inspectors. The dissent by Mr. Justice Burton, concurred in by Mr. Justice Reed, states:

"In my opinion, also, the duties which the inspector was seeking to perform, under the authority of the District, were of such a reasonable, general, routine accepted and important character, in the protection of [fol. 33] the public health and safety, that they are being performed lawfully without such a search warrant as is required by the Fourth Amendment to protect the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures."

In the Ohio case of *Eaton* v. *Price,* 151 N.E.2d 523, the constitutionality of a Dayton ordinance providing for inspection of premises without a search warrant was questioned. The pertinent portion of the ordinance reads as follows:

"The house inspector is hereby authorized and directed to make inspections to determine the condition

> of dwellings . . . in order that he may perform his duty of safeguarding the health and safety of the occupants of dwellings and of the general public . . . . the house inspector is hereby authorized to enter, examine and survey at any reasonable hour all dwellings, dwelling units, rooming houses, rooming units and premises."

It will be noted that the foregoing quoted City of Dayton ordinance does not require reasonable cause for the inspection but merely requires the inspection to be made at a reasonable hour. The ordinance is similar in scope to Section 503 of the San Francisco Housing Code.

The Supreme Court of Ohio in the *Eaton* case held that the Dayton ordinance was constitutional and that the in-[fol. 34] spection without a search warrant did not constitute an unreasonable search and seizure. The court alludes to the *Little* case, supra, and is persuaded by the dissent in that case. The word "unreasonable" search presupposes that a reasonable search is allowable and the court was not ready to conclude that any search without a search warrant would be unreasonable. The prohibition against unreasonable searches does not forbid reasonable searches. (*U. S. v. Rabinowitz,* 339 U.S. 56; 94 L.Ed. 653.)

The court in the *Eaton* case holds, at page 532, that the right of privacy is subject to the general welfare, stating:

> "The right of a home owner to the inviolability of his castle should be subordinate to the general health and safety of the community where he lives."

Appellate review of the *Eaton* case was sought in the Supreme Court of the United States, 360 U. S. 246; 3 L.Ed. 2d 1200. The four justices writing the majority opinion in the *Frank* case, supra, voted to deny review of the *Eaton* case, in that said case was similar to the *Frank* case, which was controlling on this subject. The *Frank* case had been decided just two weeks prior to the Supreme Court's review of the *Eaton* case. Mr. Justice Stewart, who voted

with the majority in the *Frank* case, did not participate in the hearing since his father then served on the Supreme Court bench in Ohio.

The *Eaton* v. *Price* case, supra, was again before the [fol. 35] Supreme Court one year later (364 U.S. 263; 4 L.Ed. 2d 1708) and the four justices constituting the dissent in the *Frank* case argued that Supreme Court jurisdiction should be allowed in the *Eaton* case because of the sharply divided court (5 to 4) which decided the *Frank* case. Because of such division, they argued that the *Frank* case could not be considered controlling authority. This latest Supreme Court decision in the *Eaton* case affirmed *necessitate* the Ohio Supreme Court.

In the case of *City of St. Louis* v. *Evans,* 337 S.W.2d 948, the Missouri Supreme Court upheld the right of a building inspector to enter without a search warrant into premises in the performance of his duty between the hours of 9 A.M. and 6 P.M. or at any time necessary in his opinion. The inspection involved in that case was requested pursuant to an owner application for a permit to operate the premises as a rooming house, for which a permit of occupancy was required.

In *Givner* v. *State,* 124 Atl. 764, the Court of Appeals of Maryland held constitutional an ordinance authorizing certain city inspectors to enter premises without a search warrant at any time during business hours for the purpose of determining whether the structure complied with code regulations. The court, at page 769, quotes from Cornelius on Searches and Seizures as follows:

> "The constitutional provision in question, while primarily designed to protect the individual in the sanc- [fol. 36] tity of his home and in the privacy of his books, papers and property, does not apply to reasonable rules and regulations adopted in the exercise of the police power for the protection of the public health, morals and welfare."

The United States Supreme Court case of *Frank* v. *Maryland,* supra, continues to be authority for the right of a

health inspector to enter premises without a search warrant for the purpose of making an inspection therein. In addition, the *Frank* case authorizes such right during an area-by-area inspection performed in the maintenance of the community's public health. The *Eaton* case, construing an ordinance similar to Section 503 of the San Francisco Housing Code upholds the right to inspection without a search warrant even though no cause is shown to exist. See also *City of St. Louis* v. *Evans,* supra.

In conclusion it is submitted that the constitutional guaranties provided by the Fourth Amendment against unreasonable searches and seizures do not prohibit a reasonable inspection of premises by authorized city and county agents for the purpose of enforcing and maintaining regulations enacted under the police power for the protection of the public health, safety and welfare of the inhabitants of the City and County of San Francisco.

March 4, 1964.

Respectfully submitted,

[fol. 37] Thomas C. Lynch, By Frank W. Shaw.

IN THE SUPERIOR COURT

ORDER DENYING PETITION—March 21, 1964

The above entitled matter came on regularly to be heard on the 5th day of March, 1964, petitioner, Roland Camara, appearing personally and by his attorney, Marshall Krause, and Frank W. Shaw appearing on behalf of respondent, and the court having heard arguments in support of and in opposition to the petition, the court now finds that Section 503 of the San Francisco Municipal Housing Code is not unconstitutional as alleged in said petition;

It Is Therefore Ordered, that the petition is hereby denied and the alternative writ is hereby dissolved.

Dated: March 19th, 1964.

Joseph Karesh, Judge of the Superior Court.

[fol. 38]

IN THE SUPERIOR COURT

NOTICE OF APPEAL—Filed March 25, 1964

To the Clerk of the Above Court:

Please take notice that the petitioner in the above action appeals to the District Court of Appeal of the State of California, First Appellate District, from the order and judgment of the above Court in favor of respondent and in favor of the real party in interest and denying his petition and dissolving the alternative writ. Said order and judgment was entered on March 19, 1964 at page 6 of Book 108 of the Judgment Book.

Dated March 23, 1964

Marshall W. Krause, Attorney for Petitioner.

IN THE SUPERIOR COURT

NOTICE TO PREPARE TRANSCRIPT AND DESIGNATION OF RECORD ON APPEAL—Filed March 25, 1964

To the Clerk of the Above Court and to the Respondent and the Real Party in Interest and Their Attorneys:

Please take notice that petitioner in the above case [fol. 39] has appealed to the District Court of Appeal of the State of California, First Appellate District, from the order and judgment entered on March 19, 1964 at page 6 of Volume 108 of the Judgment Book of the above Court.

Please prepare a Reporter's Transcript consisting of all oral proceedings in said action, and a Clerk's Transcript consisting of:

(1) Petition for Writ of Prohibition;

(2) Memorandum of Points and Authorities in Support of Petition;

(3) Order Granting Alternative Writ;

(4) Alternative Writ of Prohibition;

(5) Answer to Petition for Writ of Prohibition;

(6) Memorandum of Points and Authorities in Opposition to Petition;

(7) Order Denying Petition;

(8) Notice of Appeal; and

(9) This Notice.

Dated: March 23, 1964

Marshall W. Krause, Attorney for Petitioner.

[fol. 40] Clerk's Certificate (omitted in printing).

[fol. 41]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

Before: The Honorable Joseph Karesh, Judge.

Department No. 16

No. 540686

ROLAND CAMARA, Petitioner,

vs.

THE MUNICIPAL COURT OF THE CITY AND COUNTY OF SAN FRANCISCO, Respondent,

PEOPLE OF THE STATE OF CALIFORNIA, Real Party in Interest.

Reporter's Transcript

APPEARANCES:

For Respondent:

Thomas C. Lynch, District Attorney, 880 Bryant Street, San Francisco, California, By: Frank W. Shaw, Deputy District Attorney.

For Petitioner:

Marshall W. Krause, Esq., Staff Counsel, American Civil Liberties Union, 503 Market Street, San Francisco, California.

[fol. 42]

Thursday, March 5, 1964, 2:00 P.M.

The Court: Call the case, Mr. Maguire.
The Clerk: Camara vs. Municipal Court.
The Court: State your names for the record, gentlemen.

Mr. Krause: Marshall Krause appearing for the petitioner, Your Honor.

Mr. Shaw: Frank Shaw, District Attorney's office, appearing for the respondent, Your Honor.

COLLOQUY BETWEEN COURT AND COUNSEL

The Court: You may be seated.

If the attack, Mr. Krause, is going to be upon the constitutionality of the ordinance, I feel that your petition is overdrawn, you go into factual matters. I think the District Attorney suggested that to the Court, and then he went on to deny some of the allegations that you had asserted in the petition. I think what we are to determine is whether or not this ordinance is unconstitutional, not whether or not the facts in this particular case warrant a going-on with a trial. It may be sufficient in the allegations of the District Attorney that we are not considering the ordinance for them to proceed, but if we are going on the constitutionality of the order, that may or may not be a different thing. You understand what I am trying to say?

Mr. Krause: Yes. I understand it. And I do take the position that it is unconstitutional on its face, and I want to argue that, but also I am concerned with this: On [fol. 43] occasion when a statute is attacked as unconstitutional, the Court will say, well, it might be unconstitutional if it were interpreted the way it seems to read but we will read this and that provision in it and under this reading, it is not unconstitutional on its face. So I am concerned with the possibility that a Court would say, even though this ordinance has no requirement of probable cause before an inspection is made, we will read that in, therefore I think we would be entitled to show, even if that is the way the statute is interpreted, there is no probable cause, and therefore our constitutional attack would therefore be valid.

The Court: No, it would apply with this particular case; you are not concerned alone with this particular case.

Mr. Krause: We are concerned with the broader aspects of it, but my client is faced with a trial also on a criminal charge.

The Court: May I have the file, Mr. Maguire.

I would like to ask the District Attorney a question. Does the ordinance provide that the inspector may, on his own, without any reason, go into a man's premises?

Mr. Shaw: Not just arbitrarily, Your Honor. It provides that: "Authorized employees of the city departments, or city agencies, so far as may be necessary for the performance of their duties, shall, upon presentation of proper credentials, have the right to enter, at reasonable times, any building, structure, or premises in the city to perform any [fol. 44] duty imposed upon them by the Municipal Code."

The Court: So that in effect means if they wanted to inspect just to make a spot check they could ring the bell and go in.

Mr. Shaw: At a reasonable time, to ascertain a factual situation which would be within their responsibilities under the code, to determine.

The Court: Well, must it be that they have a suspicion that something is wrong, or can they just conduct a spot check?

Mr. Shaw: Under the wording of this statute, there need be no suspicion, but we do have cases; in fact, the Supreme Court of the United States has ruled upon a case affirming the Supreme Court of the State of Ohio in a similar statute where there was no cause required or suspicion required under the ordinance in question. That was the case of Ohio vs. Price.

The Court: Do you have the ordinance out of Ohio?

Mr. Shaw: Yes, Your Honor.

The Court: What does the ordinance provide?

Mr. Shaw: It provides that the— This is section 806-30a of the Dayton, Ohio code of general ordinances, provides that: "The house inspector is hereby authorized and directed to make inspections to determine the condition of

dwellings, dwelling units, rooming houses, rooming units [fol. 45] and premises located within the city of Dayton in order that he may perform his duty of safeguarding the health and safety of the occupants of dwellings and of the general public."

The Court: Isn't that ordinance just like ours, Mr. Krause?

Mr. Krause: I would say it is fairly similar. Commenting on it, I would say that the decision of the United States Supreme Court is not precedent because it was affirmed by an equally divided court, and it is well known that when a judgment is affirmed without an opinion by an equally divided court, it is not precedent. And, as you know, from the Franke vs. Maryland case, the Supreme Court is divided very sharply on this issue, and I don't think we can say Ohio vs. Price is precedent.

Mr. Shaw: Well, that was the position taken by the dissent in the Supreme Court ruling on the Ohio vs. Price case. But the majority, as it were, in that case which was, it is conceded, a four-to-four decision, took the position that they did necessitate affirm this decision because it did not want it misconstrued as to their position in the matter, and in the wording of their decision, they did affirm this particular decision of the Ohio Supreme Court, affirming the conviction of the lower courts, and I feel that here we have the Supreme Court of the United States in the case of Maryland, Franke vs. Maryland in a five-four decision. [fol. 46] The Court: When was that decided?

Mr. Shaw: 1959, Your Honor, the first decision, and several weeks after rendering that decision, although it seems to be—I'm not sure whether it is two weeks or two months, one of the decisions says two weeks, but within a maximum period of two months, the court is again presented with a decision—a factual situation and asked to determine the constitutionality of a statute similar to the one they decided in Franke vs. Maryland.

The Court: In Franke vs. Maryland it says whenever they shall have cause to suspect that a nuisance exists.

Mr. Shaw: Yes, Your Honor, but it further provided in the decision of Franke vs. Maryland—

The Court: " . . . valid grounds for suspicion of the existence of a nuisance must exist."

Then he goes on to say, "Certainly the presence of a pile of filth in the back yard combined with a run-down condition of the house, gave adequate grounds for such suspicion."

Mr. Shaw: Well, that is because, Your Honor, in that particular case the statute in question required that there be suspicion that a nuisance exists, but the Supreme Court of the United States in their decision went on to say that they not only affirm the right of health inspectors to make a specific inspection of premises for a specified purpose, [fol. 47] but they also affirm the right of inspectors to make area-by-area searches, and this clearly indicates the right of the Court or, rather, the right of the inspectors not only to look for a specific nuisance, but to conduct area by area general inspections to determine, for example, if fire hazards or health hazards exist in the premises. Obviously, there are many hazards existing within premises that would not be known to health inspectors or fire inspectors generally, if they did not have the opportunity to go inside and ascertain that for themselves.

In one of the cases it is suggested that warrants could be obtained, search warrants, but obviously the inspectors would have to make a showing of probable cause in order to obtain a warrant, and it would be impossible in the great majority of the cases in the city system of inspection, which is essentially to promote the welfare and well-being, the health of the community would fall by the wayside. I was searching for the specific language of the court in the Franke case.

It provides: " . . . Time and experience have forcefully taught that the power to inspect dwelling places, either as a matter of systematic area-by-area search, or, as here, to treat a specific problem, is of indispensable importance to the maintenance of community health; a power that would

be greatly hobbled by the blanket requirement of the safeguards necessary for a search of evidence of criminal acts. [fol. 48] The need for preventive action is great, and city after city has seen this need and granted the power of inspection to its health officials; and these inspections are apparently welcomed by all but an insignificant few. Certainly, the nature of our society has not vitiated the need for inspections first thought necessary 158 years ago . . ."

Now, this is the language of the majority of the Supreme Court of the United States speaking on this issue. And now, two weeks later, the Ohio statute is presented to them for its consideration, a statute which is almost identical to our San Francisco ordinance, and at this time—it was a very—rather unusual procedure, but it first came before the court in 1959, June 8, and at that time four of the justices who had participated in the majority opinion in the Franke vs. Maryland case, voted against noting probable jurisdiction on the basis that the Franke vs. Maryland decision was controlling on this point and they used that language in substance.

They also went on to say, well, essentially they voted against noting probable jurisdiction, because they just decided the same point several weeks before. Then the case was not really argued until April 19 of 1960.

Two months thereafter, June 27, 1960, the judgment was affirmed by an equally divided court, and Justice Stewart abstained, did not participate in this decision because his [fol. 49] father is a member of the Ohio Supreme Court, or was, at that time, so that we had a four-four decision, but the four members who had participated in the majority decision in Franke vs. Maryland actually affirmed this decision.

Now, apparently, the four members of the U. S. Supreme Court who had comprised the dissenting factor on the Franke vs. Maryland case felt they should also have an opportunity to note their position, so on October 10, 1960—excuse me, at that same time Justice Brennan filed a separate dissenting opinion, concurred by Warren, Black and

Douglas, and at that time they did state, as counsel mentioned, that that judgment is without force as precedent, but that is the dissent speaking there, Your Honor, and I believe that we are entitled to rely upon the language of the court that they did in fact affirm the Ohio decision.

The Court: Counsel, in section 503, it provides that, among other things, that "authorized employees of the city departments or city agencies, so far as may be necessary for the performance of their duties, shall," so on, "have the right to enter . . ."

Now, where are the duties of the inspectors listed in the housing code? Do you have their duties?

Mr. Shaw: I have several of them, Your Honor. I did not make notations as to all of them, but I can cite Your Honor to a number of them.

The Court: All right.

[fol. 50] Mr. Shaw: As I pointed out in my answer, if I may allude to the factual situation preceding the defendant's arrest for a moment, the purpose of the inspector in being there was to conduct an annual routine inspection of the premises pursuant to section 86, part 3, of the Municipal Code.

Now this section provides that: "Every person, firm, partnership or corporation maintaining, conducting or operating an apartment house, shall pay an annual license fee as follows, to defray the cost of inspection and regulation by the Division of Housing Inspection of the Department of Public Health, Fire Prevention Bureau, and Bureau of Licenses, and no permits of occupancy shall be issued by the Division of Housing Inspection therefor without said licenses first having been had and obtained."

And then the section goes on to list the various fees that are to be charged for this inspection, and the one that would be pertinent to this particular inspection would be apartment houses of less than twenty rooms, would be an annual license fee of $12, and this fee is payable on the first day of October of each year.

And the "inspection and regulation shall be made by the Bureau of Housing Inspection of the Department of Public Health and the Fire Prevention Bureau at least once a year and as often thereafter as may be deemed necessary."

[fol. 51] So that here we have an inspector going to the premises to conduct an inspection of the premises pursuant to section 86 of the Municipal Code, part 3. At this point he is unaware that there is an existing violation, in violation of an existing permit, and as pointed out in the answer, the permanent occupancy provided for eight apartment units on the third floor, eight on the second, and none on the first floor, so here was a duty that we were required to perform within the meaning of section 503, it was a duty that was their responsibility to perform under the code within the meaning of 503, and that was their purpose in being there, and they have a right under this section to inspect the premises to see that the premises are being occupied in accordance with the existing permit of occupancy, to see that it hasn't become an overcrowded tenement, and that the sanitation conditions are conducive to the general well-being of the occupants of the apartment house, as well as the community in general. This is a reasonable ordinance, section 86, and I am sure the objective of it is apparent to the Court that it is important that the city inspectors know how many people are occupying a given apartment house so that they won't have overcrowded and congested slum conditions. So it was in pursuance of this ordinance that they went to the premises and then the inspector was informed by the landlady, or rather the manager, that Mr. Camara is in fact occupying the ground floor, at least a portion of the ground floor, as a resident [fol. 52] partially, that he is sleeping in the rear of his store. I would not have gone into this, Your Honor, but counsel has raised the issue, and I feel that it is appropriate that I give some consideration to it in my argument.

The Court: Well, now, let me ask you a question. Suppose that they wanted just to walk up to the door of any residence, anybody's home, can they do it?

Mr. Shaw: Only if they have a legitimate objective spelled out under the Municipal or State codes that governs the responsibilities of whatever inspector or whatever department this individual happened to be.

The Court: They just couldn't make a spot check, could they, just go out to Ingleside Terrace and make a spot check of any home they wanted to without any cause, they couldn't do that, could they? It has to be in performance of their duty.

Mr. Shaw: Well, that is what the ordinance spells out specifically, Your Honor, that it must be in the performance of their duties under the law. Certainly that is a qualification of their rights under this ordinance, so that they could not engage in capricious or arbitrary invasions of individual liberty, which certainly I would also be against, but the people also have some rights to see that various ordinances of the city which are enacted to promote the general welfare of the community are adhered to and followed, and that is the purpose of allowing the inspectors [fol. 53] to go in, to see that, for example, the fire inspector could go in. We had a recent catastrophe several weeks ago where four people were burned in a fire in a home, and there was some question about the construction. Well, as Mr. Krause will point out, they have the right to check those conditions at the time the building is constructed. Well, this is fine for a new building, but what about buildings that are twenty and thirty and forty years old? Should not the city inspectors have the right to make reasonable inspections to see that there are no fire or health hazards? It seems to me to be clearly reasonable, Your Honor, and I think that the ordinance in question is practically on all fours with the ordinance that the Supreme Court at least affirmed by a four-to-four decision—

The Court: Well, counsel concedes that the Ohio ordinance and our ordinance are the same in substance; is that right, Mr. Krause?

Mr. Krause: Yes, Your Honor.

The Court: What you are saying is that the decision should not be precedent, because it was by a four-to-four decision.

Mr. Krause: I think that anyone who is familiar with the Supreme Court practice knows the rule that when a decision is not reached by a majority of the court, it is not precedent and it is affirmed without opinion, and if you look at Franke vs. Maryland, the official report says affirmed [fol. 54] by an equally divided court. And I have cited two cases in my memorandum where it has been held that no case where it is affirmed by an equally divided court is precedent or binding. It's true—

The Court: It is extremely persuasive.

Mr. Krause: Well, let's put it this way: This Franke vs. Maryland, the earlier case was a bitter division in the court, five to four.

The Court: Who were the justices; you have the volume?

Mr. Krause: Yes.

Mr. Shaw: Yes, Your Honor.

The Court: Who were the justices of the four-four decision?

Mr. Krause: I could tell you that the four in the minority are still there and two of the majority have been replaced by Justices White and Goldberg, who have not expressed themselves on this position, so there are four that believe it is unconstitutional and three that believe that it is not, and two who have not expressed themselves.

The Court: I was always under the opinion that where the Court differs four-four, that while it may not be precedent it is extremely persuasive, and it should take more than a lower court to go against it.

Mr. Krause: Well—

Mr. Shaw: I think, Your Honor, a reading of that par- [fol. 55] ticular case which we have here would convince Your Honor that the four justices who have expressed their views in the Ohio case take a very strong position, and, obviously, even if we concede that it is not legal precedent, we have the Supreme Court of the United States refusing to

rule upon this constitutional issue presented because they had just ruled upon the issue two weeks before. Now, obviously, if they didn't think that their Franke vs. Maryland decision reached—rendered two weeks before, was controlling, they would have decided the constitutional issues specifically in Ohio—in the Ohio case, and I refer again to the language of the Franke vs. Maryland case where the court specifically provides, time and experience have forcibly taught that the power to inspect dwelling places, either as a matter of systematic area by area search, or, as here, to treat a specific problem, is of indispensable importance to the maintenance of community health.

Now—

The Court: May I ask you a question?

Mr. Shaw: Surely, Your Honor.

The Court: Has it ever occurred in San Francisco, to your knowledge in the District Attorney's office that the statute is used by the police to get into premises where they can't get a search warrant?

Mr. Shaw: I have never known of such an instance. I am sure if there were one, Mr. Krause of the Civil Liberties [fol. 56] Union would be able to respond to that immediately.

Mr. Krause: I wish we did hear about everything we would like to complain about. Unfortunately, most of these things pass by in the night.

Mr. Shaw: That is pure assumption on his part, Your Honor.

The Court: Is it stipulated as to the facts of this case that are set out in the pleading, or are you in dispute as to any—

Mr. Krause: Your Honor, we have—Mr. Shaw and I have agreed on a few stipulations which can clear up some of the things. If I may state them now, and if we may stipulate for the record, I think—

The Court: I mean, I am frank to tell you, the simplest thing for the Court to do would be to try to decide it on the facts of this case, this particular case, without going

simply on the constitutionality of the section, but I think I would be shirking my responsibility; so far as this case is concerned, counsel, where it involves an apartment house, I am of the opinion that if this ordinance were limited strictly to apartment houses, there wouldn't be any question in my mind but that this particular ordinance is constitutional, they have a right to inspect apartment houses, they grant permits for the running of apartment houses, just like they may inspect hospitals that get their permits or their licenses to operate. What concerns the Court is that [fol. 57] it would give the right to go into anyone's home willy nilly, and that the Court would not approve of, but this section, so far as may be necessary for the performance of their duties, might take care of that particular situation. I am not sure that this would allow you to make a systematic check of neighborhoods, I don't think so, but so far as the facts of this case are concerned in relation to an apartment house, there isn't any question in my mind under this statute that they have a right to do what they do. You have got to draw a distinction between an apartment house and a private dwelling.

Mr. Krause: Let me say that I don't disagree with anything Your Honor has said. I think that any business that has a license, whether it is a liquor store or an apartment house, may be inspected by the licensing authorities. This is not what we are challenging here; we are challenging not the right to come in and ask the owner how many apartments he has, or look at his fire escapes, or look at his kitchen, if he has a public kitchen, such as a restaurant, we are not asking that that be struck down, we think that that is reasonable, we think that it is necessary. What we are seeking to protect is the right of the private apartment dweller.

The Court: But suppose—they have a right, Mr. Krause, to know whether or not these apartments are being used in violation of law, and I have had cases before me now where [fol. 58] —in other matters where private dwellings—apartments, are being used for purposes they should not be used,

and I don't think you can draw a distinction that you are drawing, they certainly have a right, so far as this Court is concerned, I believe, to go into their license, they have a right to go in—up and say, "I want to inspect these premises to be sure that this apartment house is conforming to the law."

Mr. Krause: They could inspect the apartment house, but when it comes to going into a private apartment and inspecting that apartment, it is a little bit different.

Now, let me say in this case, what the situation is: Now, we have talked a little bit about the facts, and I would like to get into this question of what we want to stipulate as the facts. First of all, we want to stipulate that Mr. Camara does live in an apartment on the ground floor in the building known as 225 Jones Street, his particular address happens to be 223 Jones Street, and we also want to stipulate that Mr. Camara is not the owner of this building, he is merely the lessee of the ground floor known as 223 Jones Street, which is part of 225 Jones Street. And these things I think are conceded and will clear up some things.

Mr. Shaw, are you willing to stipulate to those statements?

Mr. Shaw: Mr. Camara is a lessee of a portion of the ground floor of that apartment house and his particular [fol. 59] door is known as 223, whereas the main door to the premises is 225. It might clarify a situation in my brief where I refer to both addresses; it might be confusing.

Mr. Krause: We also, I believe, can stipulate that Mr. Camara informed the building inspectors when they came that he was living on the ground floor. Is that right, Mr. Shaw?

Mr. Shaw: Well—

Mr. Krause: I think you—

Mr. Shaw: —I believe in your petition you set forth as an allegation of fact that he is in fact residing on the premises. It did not specify what portion of the premises, although you referred specifically to an apartment, which

is not the case, he lives in a store on the ground floor, and I would be willing to stipulate to that.

Mr. Krause: And that he informed the inspectors that he did live there.

The Court: Well, you are going into the trial of this case. Remember that came up on a demurrer which was before His Honor, Judge Maloney, and the demurrer was overruled. There weren't any factual questions. So far as the facts of this case are concerned, the only facts I am interested in is that it is an apartment house. And if it is an apartment house, counsel, the Court would pass on the question of whether it is constitutional, a permit being granted, whether it is constitutional to go into all the apartments. [fol. 60] Mr. Krause: Yes.

The Court: And I am of the opinion that they have a right to do that. Now, I would not say that, Mr. Shaw, if we had a private dwelling. You may disagree with the Court but this is a very simple situation. We get a permit to operate an apartment house, and they have a right to inspect.

Mr. Shaw: We have such situations as mother-in-law apartments which Your Honor is aware are illegal. I think the inspectors have the right to inspect private dwellings as well to ascertain not only if such situations exist in violation of the law or that fire hazards or health hazards may exist in a private home, as well, which could not only be a—could be dangerous to the welfare of the occupants, but to the neighborhood, as well.

The Court: Well, I don't have to pass upon that particular situation.

Mr. Shaw: No.

The Court: We are concerned with an apartment house.

Mr. Shaw: May I make just—

Mr. Krause: Let me respond, since Your Honor put me very much on the defensive.

The Court: I had no intention of putting you on the defensive.

Mr. Krause: I feel very much on the defensive, let's put it that way.

The Court: Well, you have a United States court against [fol. 61] you.

Mr. Krause: I don't mind walking uphill, struggling uphill. I want to say this, that Mr. Shaw has been very careful to distinguish this language in section 503, in the performance of their duties, and, as I understand his presentation, he is not saying it requires any showing of cause that there is a violation of any ordinance or statute occurring on the premises, he merely says that if the health inspector is acting in the good faith, that he really wants to inspect to make sure that the kitchen conforms to the building requirements, or some other reason for inspection, and he is not there for the purpose of trying to steal something from the apartment, then Mr. Shaw—

The Court: Or use it as a device to get a law enforcement officer in who can't get a search warrant.

Mr. Krause: Right, this is, of course, one of the things that I am worried about. I am not saying that there is anything of that sort in this case, but I think we are entitled to—

The Court: I am not suggesting that that is being done.

Mr. Krause: Yes. I think we are entitled to look at what this statute could do when we are talking about what a statute means on its face.

Now, Mr. Shaw has said to you, and I have his words down here, quote—in answer to one of your questions, [fol. 62] quote, There need be no suspicion, end quote. That was one of your first questions, and he answered it, No, there need be no suspicion as long as the inspection takes place in reasonable hours, as long as the health inspector is acting in good faith in the performance of his duties. End of quote.

Well, in that situation—

The Court: I won't go that far with you.

Mr. Krause: Well, that's what he said the statute means and that's what I think it means, too, and why I think it

is invalid. If it requires that the health inspector have some cause, then there is a different question about validity.

The Court: I don't think so far as apartment houses are concerned, they need any cause. There is the permit to run an apartment house, and that gives with it the concomitant right to inspect.

Mr. Krause: Yes, to—

The Court: So you may have picked the wrong case—

Mr. Krause: —to inspect—

The Court: —to attack.

Mr. Krause: Your Honor, you are putting the poor apartment dwelling—dweller in a bad position, as far as the Fourth Amendment.

The Court: You conceded that if you have to have a license, they have a right to inspect.

Mr. Krause: But I didn't say that—

[fol. 63] The Court: That as far as I say, they have a right to inspect.

Mr. Krause: If I said that they can inspect private apartments, then I wish to retreat, because I wanted to point out that I think that they can inspect the fire escapes, they can inspect the corridors, they can inspect the public aspects of that apartment, and they can talk to the owner about how many apartments there are, and other considerations, but they can't knock on the door of a private dwelling and insist on coming in, whether it is an apartment or not.

Now, Mr. Camara, it has now been conceded, is not the owner of this dwelling, he does not have the duty or responsibility or the right to even apply for any occupancy permit.

The Court: That is up to the trial court, that is not before me.

Mr. Krause: No.

The Court: You came up on demurrer. There was a demurrer, it was overruled,—

Mr. Krause: Yes.

The Court: —on the fact of its constitutionality.

Mr. Krause: Yes. This ordinance purports to give the inspectors here involved the right to go into Mr. Camara's apartment or any house in the city, Your Honor, without any showing of cause, and that is what is wrong with it.

I want to call to your attention a very recent case which [fol. 64] I just read a few days ago myself, and so I haven't had a chance to call it to the attention of Mr. Shaw. It does not involve inspections, it does involve the constitutionality of an Elections Code provision where the court said that the requirements of this Elections Code provision are very salutary, it does a good job, and we like it, but it goes much too far, it allows too much regulation on inspection material, and the court went on to hold that where a statute is overbroad in its scope, it must be declared invalid where constitutional rights are involved, and the citation on that case, Your Honor, is Canon vs. Justice Court. It is a prohibition proceeding just like this one. It is 224 ACA 88, and I hope you will have an opportunity to look at that, because it says that where a statute is too broadly drafted, and this broad drafting could result in a constriction of constitutional rights, it has to be held invalid. That is what we are getting at here.

Mr. Shaw: Your Honor, I would like to point out in response to a question, Your Honor asked me a few minutes ago, the justices who participated in the majority decision in Franke vs. Maryland, and who participated in what I consider the majority opinion in at least affirming the Ohio case, Ohio vs. Price, was Frankfurter, Clark, Harlan and Whitaker.

The Court: Who were they?

Mr. Shaw: Frankfurter, Clark, Harlan and Whitaker, with Justice Stewart abstaining, because of his father's [fol. 65] position on the Ohio Supreme Court.

Now, in quoting certain portions of the Franke case, specifically that language which affirmed the right of inspectors to make a systematic area by area search, this was on page 3 of my memorandum of points and authori-

ties, Your Honor, and I might point out that although Your Honor has taken the position that it is not before you, that the Supreme Court of the United States makes no distinction between a private home and an apartment house, they say that this right extends to all dwellings.

I would also like to point out to Your Honor that the two cases that I cited, one is the City of St. Louis vs. Evans, 337 Southwestern 2d 948, wherein the Missouri Supreme Court upheld the right of a building inspector to enter without a search warrant into premises in the performance of his duty between the hours of 9 a.m. and 6 p.m., or at any time necessary in his opinion. The inspection involved there was requested pursuant to an owner application for a permit, and that statute, which is set forth in page 953 of that opinion, is almost identical to ours.

"When necessary in the performance of duty, the building commissioner or subordinate or authorized agents, or any designated official or subordinates or authorized agents, are hereby empowered,"

and so on, to enter any structure, any structure, for the purpose of inspection.

[fol. 66] Now, I also have a case, Givner vs. State, 124 Atlantic, 764, the Court of Appeals of Maryland, State of Maryland, held it constitutional, an ordinance authorizing certain city inspectors to enter premises without a search warrant, at any time during business hours for the purpose of determining whether the structure complied with the code regulations.

Here we have the Supreme Court of two different states, actually we have three: We have Ohio. Missouri, and Maryland—rather the Supreme Court of two of the states and the Court of Appeals in Givner—the Givner ruling on the same issue on practically identical ordinances. For all intents and purposes these three statutes or ordinances are identical in their import.

The Court: Well, I may interpret—so far as may be necessary for the performance of their duties, I may interpret that differently than you interpret it, but so far as

this particular case is concerned, so far as this happens to be an apartment house case, it seems to me that in the performance of their duties, this being an apartment house, and that is conceded, and permits having been issued, they have a right to go into there.

Mr. Shaw: But, Your Honor, counsel is attacking the constitutionality of the entire ordinance, not just applicable to apartment houses.

The Court: I have to decide whether I should issue a writ of prohibition on the facts of this case, don't I?

[fol. 67] Mr. Shaw: Not on the facts of this case, on the—

The Court: The facts on the law of this case.

Mr. Shaw: Of the law involved in this case.

The Court: Well, this is the law as applied to apartment houses.

Mr. Shaw: Very well, Your Honor—

Mr. Krause: If we are going to get into the facts, Your Honor—

Mr. Shaw: —I am not going to—

Mr. Krause: —Mr. Shaw has talked a little bit about the residence of Mr. Camara, and I would like to tell you what we would offer to prove here. We would offer to prove, if Your Honor wanted to get into a factual study—

The Court: All the facts I have to know is if it is stipulated that this is an apartment house, that is all the facts I need know. I am not concerned with any other facts.

Mr. Krause: Yes, because Mr. Shaw has said some things, I feel it necessary to make an offer, Your Honor, just to call it to your attention, to have it on the record.

The Court: All right; all right.

Mr. Krause: We could prove that the building at 225 Jones Street was built in 1923 under a building permit filed with the City and County of San Francisco, number 116526, and that the original plans, as approved by the officials of the City and County of San Francisco provided that the ground floor at 223 Jones Street should contain both the [fol. 68] store and an apartment, that the plans provided for an apartment with a bedroom and a bathroom and a kitchen—

Mr. Shaw: I don't see what relevancy plans have, the permit was for a commercial unit on the ground floor; from the inception in 1924 there has never been any permit issued for an apartment on the ground floor. I feel that is misleading. Any plans the building contractor may have had are completely immaterial.

Mr. Krause: Well, I want to say further that our offer of proof would be that this apartment has been occupied as an apartment since 1923, has never been changed in one aspect.

The Court: This may be well used at the time of trial.

Mr. Krause: Yes.

The Court: But not before this court.

Mr. Krause: Well, I realize your position, but I think I have to get it in here because of what Mr. Shaw has said. He has said that there is an illegal occupancy. And I also want to say that this building permit probably precedes any occupancy requirement by the City and County of San Francisco, and therefore the apartment may very well be legal and we would certainly prove it legal if we were asked to do so, and if it were relevant. I am not saying—Your Honor has said it is not relevant, but I just want to get it into the record.

[fol. 69] The Court: I understand.

Mr. Shaw: I have the permit issued in 1924 which provides for a commercial unit on the ground floor, no apartment. Now, Your Honor—Your Honor, I would like to refer to the statute a minute.

503 provides: "Authorized employees of the City Department or City agencies, so far as may be necessary for the performance of their duties, shall, upon presentation of proper credentials, have the right to enter, at reasonable times, any building, structure, or premises in the City to perform any duty imposed upon them by the Municipal Code."

It is not restricted to apartment houses. And Mr. Krause, in his petition, is attacking the constitutionality of this ordinance upon its face.

The Court: May I say the way I interpret this ordinance, and you may interpret it different than the way I do, so far as apartment houses are concerned, it is necessary for the performance of their duties that they make these spot checks, there is no question about it, but it is not necessary for the performance of their duties that they make a spot check of a home. They have got to have some ground for it. But it is absolutely necessary in the performance of their duties to check any apartment house they want to. That is the way I interpret the section. You may say that they can make a spot check of a home. I don't see that [fol. 70] means that under necessary performance of their duty. The words "necessary for the performance of their duties" accords due process. It is not vague to the Court, but this is not before me.

Mr. Shaw: In order to determine what was encompassed under performance of duties, we would have to present to Your Honor all the various duties imposed upon departmental officials of the City government, which do require them to go into homes.

The Court: Under certain circumstances, yes.

Mr. Shaw: There are many.

The Court: But that is in the performance of their duty; they just can't willy nilly ring a door bell out in Ingleside, and just ring a door bell and say, "I am going to look in your kitchen."

Mr. Shaw: I misunderstood your—

The Court: They don't do that.

Mr. Shaw: They can do that in performance of their duties.

The Court: In the performance of their duties.

Mr. Shaw: We are in agreement on that, excuse me.

The Court: And the Court says obviously in the performance of their duties, they have a right to go into any apartment house they want to, that is part of their duties. Permits are issued. They can do that, just like you can go out to the hospital and inspect a hospital, or the inspectors [fol. 71] can come in and inspect certain records involving

narcotic prescriptions in a doctor's office, that is in the performance of their duties, and I would hold that it is not in the performance of their duties to make a willy-nilly check of a home. Just because I want to be spiteful, I am going to ring a door bell, that is not in the performance of their duties. In that section, in the performance of their duties is what saved this ordinance.

Mr. Shaw: I understand, Your Honor.

The Court: And certainly in the performance of their duties, they have a right to go check apartment houses, and therefore I don't see how you can prevail, Mr. Krause. I want you to clearly understand my position. If you think I approve anybody ringing any door bell in any place, I don't think the code provides for that, it has to be in the performance of their duties.

Mr. Krause: I wish we would take—all right, I understand Your Honor's position, and I wish you would do two things before you finally decide this case: I wish you would consider whether, in the performance of their duties really limits the places where they can go, or merely refers to the powers they have under the housing code to inspect for certain purposes. It would be my position that in the performance of their duties means only that they must have the intent in their mind to do something that they are empowered to do under the code. In the performance of their [fol. 72] duties to me doesn't say one thing about where they can do it, it doesn't say—

The Court: Obviously they have a right, if you issue permits, to inspect, that is, in the performance of their duty.

Mr. Krause: Yes, but of course—and if each apartment dweller had to have a permit, then I would say we would be in bad shape; but the fact is that only the owner of the apartment has to have a permit.

The Court: That's right.

Mr. Krause: It's been stipulated now that Mr. Camara is not the owner of the apartment, but merely an apartment dweller, and I think that—

The Court: You can argue that, counsel, down in the trial court.

Mr. Krause: All right.

Now, here's another thing that I wish you would consider before you finally make up your mind, and that is this: Is it right to allow a person who has a private home to be completely free from this kind of inspection to make sure that his kitchen is cause, but when he moves into an apartment, then an inspector can come knocking on his door willy-nilly without any cause, get in there and snoop around? Now, this is dangerous to my mind. This means that an inspector can go in and violate the right to privacy which an apartment dweller has but he can't violate the [fol. 73] same right which a home owner has. I don't think that is the law. I think it is dangerous because I think the people have the right to privacy, and without being inspected in any situation in the absence of the—

The Court: When you move into an apartment house, you move in with the understanding that that may be inspected, otherwise you don't have to rent that apartment. That is one of the conditions under which you move in, and therefore you can draw that distinction.

Mr. Krause: Well—

The Court: Now, let's take a hospital. They go out and inspect hospitals. The Board of Medical Examiners go out and inspect them.

Mr. Krause: Yes. The whole premises are licensed public premises, there is no privacy, there is no Fourth Amendment right to a hospital room, that belongs to the hospital, and the hospital itself is licensed; there is no Fourth Amendment right to keep your restaurant private, if you are running a restaurant, but there is a Fourth Amendment —the Fourteenth Amendment, to be more accurate, right to keep your apartment private, and in the absence of cause, and there is the same right that applies to a private home.

The Court: I am not saying now if this case goes to trial you are going to lose.

Mr. Krause: I would like to win it here, frankly.

The Court: No, in this case you cannot. I am convinced [fol. 74] that—first of all, I do have the decisions of the United States courts. What I say is, when you move into an apartment house—what you are doing is saying when I move into this place, they have a right to inspect my premises, otherwise you don't have a right to move into the apartment house, and I say in the performance of their duties, does not permit you to just ring a man's door bell in a private house. You say why should there be a distinction. The answer is, you move into an apartment and therefore that is that distinction. But forgetting my saying all that, drawing the distinction, because it doesn't appeal to me to go to anybody's home and walk right in. The fact remains we do have the United States courts' decision.

Mr. Krause: I have, of course, an argument on that, and I would very much like to present it to you.

The Court: What is that?

Mr. Krause: And that is this: That first of all, the Franke vs. Maryland and the Ohio case were decided under the Fourteenth Amendment, and the Fourteenth Amendment at the time those cases were decided, was held by the Supreme Court—the Fourteenth Amendment at the time those cases were decided was held by the Supreme Court not to fully incorporate the search and seizure provisions of the Fourth Amendment, but only that essential portion of the Fourth Amendment. That is why under the doctrine of Wolfe vs. Colorado, evidence seized in violation of the [fol. 75] Fourth Amendment could still be used in state criminal trials, whereas Your Honor knows better than I do, since 1914, in Weeks vs. the United States, evidence illegally seized could not be used in federal courts.

Now, just about two years ago the U. S. Supreme Court decided Mapp vs. Ohio, and they said, "We are overruling Wolf vs. Colorado, no longer may evidence illegally seized be used in criminal trials in the state courts and we now hold the Fourteenth Amendment incorporates the entire Fourth Amendment."

Now, I submit that the reason that Franke vs. Maryland and Ohio vs. Price went the way they did is because of this idea that only a portion of the Fourteenth—Fourth Amendment was incorporated in the Fourteenth and not the whole thing, and once—

The Court: Mr. Krause, the way I interpret this—

Mr. Krause: Yes.

The Court: —section, your argument doesn't apply. Maybe I interpret it one way and the District Attorney interprets it that way, but the way I interpret this ordinance, you don't have anything to fear.

Mr. Krause: I realize that. I realize that what Your Honor is saying is that if I had—if this situation involved a private home, that you would be disposed to issue the writ of prohibition, but since it involves an apartment—

The Court: And the permit, you have to have a permit, [fol. 76] to operate the apartment house, they have a right to inspect—

Mr. Krause: Well, then—

The Court: This isn't a good vehicle to come up on now. I don't say in this the lessee is going to get caught. I may draw a distinction between the owner of the apartment and simply the lessee, they may find themselves in trouble in that particular phase of the case, but that is not before me.

Mr. Krause: I understand Your Honor's position, and there is no sense in me continuing this argument because it is really irrelevant to what your stand is. I want you to know that I don't agree with this distinction.

The Court: You don't agree between the distinction between the apartment house, that they have a right to go into any apartment house?

Mr. Krause: No, I wouldn't agree with that, I think that they have to show the same kind of cause they have to show for a private dwelling.

Mr. Shaw: It's interesting to point out here, Your Honor, since we have gone into the factual matters, that the owner did attempt to get the inspectors in and the defendant still refused, so I don't think there would be any problem on that score.

The Court: I have nothing to say about the trial of the case, but, Mr. Krause, you are anticipating to change the complexion of the Court, and the new Court will make new [fol. 77] laws, as you know, but ours is—but I won't add that comment, but I'm just trying to project this into a court, I'm not so sure they would say in this particular situation that they would go along with you, you have got the wrong vehicle to go up on. And I interpret this to mean in the way that I have said it, if they just willy-nilly rang a door bell in my house, they would be in difficulty. I don't think that performance of the duty means that. To abate a nuisance you have got cause to believe that there is a nuisance, apartment houses, no question about it, none whatsoever.

Mr. Shaw: Your Honor, before you rule, counsel and I were going to stipulate to one correction in his petition, on page 2, paragraph 5, that the complaint was filed on November 27th, 1963, rather than December 10, 1963.

You move to amend on its face?

Mr. Krause: Yes, I move to amend—

Mr. Shaw: Page 2—

Mr. Krause: Page 2 of our petition, line 24, to strike December 10, 1963, and insert November 27, 1963.

The Court: May be granted, and, Mr. Krause and Mr. Shaw, I went over this phrase very carefully, "so far as it may be necessary in the performance of their duties." If they had left out "so far as it may be necessary in the performance of their duties," there wouldn't be any question about it, and duties mean they have got an obligation, they have got an obligation to come in and check these [fol. 78] apartment houses, no question about it. If they didn't do it, they would violate their oaths.

Mr. Shaw: I would like to make one more amendment on page 6 of my memorandum of points and authorities. The citation of Givner vs. State is 124 Atlantic 2d. That is line 16. May it be so amended?

The Court: I found it.

Mr. Shaw: I am sorry.

The Court: That's all right. You may correct, gentlemen, each of you may correct these pleadings with the appropriate notation.

I was very interested in your argument about the Fourteenth incorporating all of the Fourth, and I'm sure with —we will call it the conservative group, that decided the Four—now, you have got Goldberg, though Justice White has been following, I think, the conservative trend, hasn't he?

Mr. Shaw: Yes, Your Honor.

Mr. Krause: I would say so. We won't give him up for lost yet.

The Court: And if you take this up on appeal and go all the way to the Supreme Court of the United States, Mr. Shaw and I will get our name in the big book, so to speak.

Prepare the order. We need findings, Mr.—

Mr. Krause: Yes. I think findings are necessary.

Mr. Shaw: I didn't prepare findings.

The Court: You don't have to—you have time, and [fol. 79] then you submit them, and maybe you can work out findings in accordance with what the Court has said.

Mr. Shaw: Have you made—

The Court: I make the ruling the writ of prohibition is—

Mr. Krause: Before you rule, I want to express our intention to appeal, and I would like the alternative writ to stay in effect until the time for notice of appeal expires, and to stay in effect if we do file our notice of appeal.

Mr. Shaw: I don't feel that that would be appropriate, Your Honor.

The Court: No, I don't want to stop the—you can get over to the appellate court. You get your papers ready, because it's going to take some time. You have ten days after he prepares his findings, you put in your counter findings.

Mr. Krause: Well, I am concerned that this—

The Court: Counsel, until I sign the written order, everything is still in effect, the alternative writ is still effective.

Mr. Shaw: I don't believe, although I am not much of a civil lawyer, I don't believe that findings are absolutely necessary, unless Your Honor requires them.

The Court: I don't want them, but, Mr. Krause, are they essential under the law? I don't want to—

Mr. Krause: I will give it some thought, Your Honor, [fol. 80] and—

Mr. Shaw: Well, he—

The Court: When is the case back before the Court?

Mr. Shaw: I don't think it's up to counsel, it's up to Your Honor, whether you want them.

The Court: I don't want them.

Mr. Shaw: I don't particularly care to prepare any findings, it's a very simple order which is in the record that Your Honor denies the petition.

The Court: Of course, you have got your transcript to go up on, my remarks—

Mr. Krause: Yes.

The Court: —so you are sufficiently protected.

Mr. Krause: Yes.

The Court: How long will it take you to get—you will have to get relief from the appellate court.

Mr. Krause: Yes. Well, I am thinking now that if I file a notice of appeal, proceedings will be stayed.

The Court: No, they are not—

Mr. Krause: Well—

The Court: Proceedings are not stayed.

Mr. Krause: I will have to do something, because I don't want—

The Court: That has to be done in the court of appeal, Mr. Krause, but what I will suggest is that he will prepare the order, and—it would be an idle victory if, for example, [fol. 81] the Court were to send it back and say, "Let the Court prepare findings." That wouldn't do you any good, would it?

Mr. Krause: No, no, I am not trying to win on any technicality.

The Court: You are trying to win on the constitutionality of the section, and I hold it to be constitutional, and I interpret it in the transcript, so prepare your order, and submit it to him for approval, and I will sign it.

Mr. Krause: Well, before you sign that, may I have some notice about it, so I can proceed to seek to stay the proceedings then?

The Court: Oh, I'll assure you of this, I'll give you—how much time would you want before—when he presents it, I will make this a practice, I will hold it back a few days.

Mr. Shaw: I will have it here tomorrow, Your Honor.

Mr. Krause: Well, all right, if you will hold it back a week, that will probably—

The Court: You submit it, but I would like you to submit it approved as to form, counsel. I don't think findings are required. You made an attack on the constitutional issue. The pleadings show it's an apartment house and that's all I know.

Mr. Shaw: Findings were—there are questions of fact involved—

[fol. 82] The Court: There are no questions of fact. Now, you know in the ABC cases, the Court will grant a stay on an alternative writ, it dies unless the court of appeal grants you the—

Mr. Krause: Yes.

The Court: Stay.

Mr. Krause: Yes.

The Court: I assure you if the appellate court in its wisdom wants to grant you a stay, I have no objection at all.

Mr. Krause: O.K., we will see what we can do.

The Court: I won't sign the order until a week—until from—no, you want to sign it Friday the 13th? You are not superstitious, are you?

Mr. Shaw: No, Your Honor.

The Court: All right.

The Clerk: What is the order, writ of prohibition—

RULING DENYING PETITION FOR WRIT OF PROHIBITION

The Court: Petition for writ of prohibition will be denied, the alternative writ will be discharged upon the Court signing the judgment.

Mr. Shaw: For the record, is there any other relief that you feel your petition requested or sought?

Mr. Krause: Well, I think the ruling of the Court disposes of the issues, certainly.

The Court: I will not sign this until either the 13th, Friday the 13th, or Monday the 16th.

Mr. Krause: Thank you, Your Honor.

[fol. 83] The Court: And so that the alternative writ will be discharged, I will say when I sign the written judgment and all—written order and judgment.

Mr. Shaw: I am sure that this could have been taken care of more easily had the calendar in the municipal court, being what it is, I don't think they would press Mr. Krause to trial next week.

The Court: No, I'm sure they— It is very interesting, this argument about the Fourteenth incorporating the Fourth.

Mr. Shaw: I might mention, Your Honor, that the Supreme Court did consider the Fourth and the Fifth Amendments in rendering their decisions here.

The Court: I know, but he says in this most recent decision, that they have changed their whole attitude about the Fourteenth incorporating the Fourth.

Mr. Shaw: Yes.

Mr. Krause: Not only that, the only thing considering this case and this issue on the Fourth Amendment was that D.C. case, the Little case, the court did decide that no search would be allowed by a health inspector. I cited that in my brief.

The Court: I read—I examined all the authorities and thought about it a great deal, and I interpret the section in one way, maybe the—I understand the mayor has sug-

gested that some of these ordinances be rewritten. Have [fol. 84] you heard anything about that, counsel?

Mr. Shaw: I just read about it.

The Court: And maybe he wants to make this language a bit more specific, but it is not vague to me.

Mr. Krause: Thank you, Your Honor.

The Court: Thank you very much. All right, counsel.

[fol. 85] Certificate of Official Reporter (omitted in printing).

[fol. 86] Clerk's Certificate (omitted in printing).

[fol. 87]

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

1 Civil No. 22128

ROLAND CAMARA, Plaintiff and Appellant,

v.

THE MUNICIPAL COURT OF THE CITY AND COUNTY OF SAN FRANCISCO, Defendant and Respondent.

OPINION—Filed September 22, 1965

This is an appeal from an order denying a writ of prohibition.

The Division of Housing Inspection of the Department of Public Health is required, under part III, section 86, of the San Francisco Municipal Code, to make an annual inspection of all San Francisco apartment houses for the purpose of licensing such apartment houses and issuing permits of occupancy.

On November 6, 1963, Inspector Nall visited the premises at 225 Jones Street for the purpose of making such an inspection, and was informed by the manager of said apartment building that the lessee of a ground floor rental unit (223 Jones), which was restricted to commercial use under an existing permit of occupancy, was using the leased premises as a residence and was living in the rear of his store. Nall then called on plaintiff, who admitted that he was living in the rear of his store, but refused to allow Nall to enter and inspect the premises. Two days later Nall [fol. 88] returned and was again refused permission to inspect the premises. Plaintiff failed to appear on a citation issued by the district attorney, after which an inspector again went to plaintiff, informed him of the health department's duty to make an annual inspection of all San Francisco apartment houses, and further informed him that the existing permit of occupancy authorized commercial and not residential use of the ground floor unit leased by plaintiff. Plaintiff again refused to allow said premises to be inspected.

Plaintiff was subsequently arrested and charged with violating section 507 of the Housing Code of the City and County of San Francisco (hereinafter referred to as "Housing Code").

Plaintiff expressly concedes that he committed the offense proscribed by section 507 of the Housing Code and that his defense to prosecution for said charge is predicated solely upon the alleged unconstitutionality of section 503 of said code. Plaintiff asserts that section 503 authorizes an unreasonable search and seizure, in violation of article I, section 19, of the California Constitution and the Fourth Amendment to the federal Constitution, as applied to the states through the Fourteenth Amendment.[1] Plaintiff also relies upon the privileges and immunities clauses of the Fourteenth Amendment.

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[1] Although the petition also alleged, as above noted, that section 503 violated article I, section 1, of the California Constitution, plaintiff has apparently abandoned this point on appeal.

Section 503 of the Housing Code provides as follows: "Authorized employees of the City departments or City agencies, so far as may be necessary for the performance of their duties, shall, upon presentation of proper credentials, have the right to enter, at reasonable times, any building, structure, or premises in the City to perform any duty imposed upon them by the Municipal Code."

[fol. 89] Section 507 of the Housing Code provides in pertinent part that "[a]ny person, the owner or his authorized agent who violates, disobeys, omits, neglects, or refuses to comply with, or who resists or opposes the execution of any of the provisions of this Code . . . shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars ($500.00), or by imprisonment, not exceeding six (6) months or by both such fine and imprisonment, unless otherwise provided in this Code . . . ."

The question whether an ordinance such as section 503 of the Housing Code is vulnerable to attack upon the constitutional grounds raised by plaintiff is one of first impression in this state. However, the constitutionality of similar regulations enacted in other jurisdictions has been challenged on several occasions and, in all but one instance, has been upheld.

We discuss first the only case which resulted in a finding of unconstitutionality, to wit: District of Columbia v. Little (D. C. Cir. 1949) 178 F.2d 13. This case was later affirmed on other than constitutional grounds (District of Columbia v. Little (1950) 339 U.S. 1). We do so because the remaining cases to which we shall refer, consider and then decide adversely to the arguments of unconstitutionality supported by the Little decision. In Little, the court undertook to determine the validity of certain regulations of the District of Columbia which required owners and occupiers of premises to maintain them in a clean and wholesome condition, authorized health officials to examine any building sup-

posed or reported to be in an unsanitary condition and denominated as a misdemeanor interference with an in-
[fol. 90] spection. Defendant Little was convicted of hindering, obstructing and interfering with a health inspector in the performance of his duties upon a showing that she had refused to unlock the door of her private residence to a health inspector who was investigating a complaint that there was an accumulation of loose and uncovered garbage and trash in the halls and that certain persons residing in the house had failed to avail themselves of the toilet facilities. The conviction was subsequently reversed, the federal circuit court of appeals holding that the Fourth Amendment prohibited health officials without a warrant from invading a private home to inspect it, even though there was probable cause to believe that there existed within the dwelling a violation of a law designed to protect the health, safety or welfare of the public. The court expressly rejected the contention that the Fourth Amendment was premised upon and limited by the Fifth Amendment and was therefore inapplicable to regulations which only incidentally involved criminal charges and which were primarily designed to protect the public health.

A dissenting opinion by Judge Holtzoff took the position that the Fourth Amendment was applicable only to proceedings of a criminal character and that the right of inspection in the interest of public safety and health was essentially a civil matter to which any criminal prosecution was only incidental.

Upon appeal to the Supreme Court of the United States, Mr. Justice Black rendered the opinion of the court that respondent Little had not been guilty of "interference" under the controlling District regulation (District of Columbia v. Little (1950) 339 U.S. 1). Accordingly, it was un-
[fol. 91] necessary to determine the validity of the ordinance involved.

We now discuss in order the four cases involving the constitutionality of ordinances similar to that involved herein,

and in each of which, as we have noted, the Little case was considered at length. However, the reasoning of the Little case did not persuade any of the appellate courts concerned and in each case the ordinance was held a valid exercise of the police power.

The first case is Givner v. State (1956) 124 A.2d 764 (210 Md. 484), wherein the Maryland Court of Appeals upheld three Baltimore ordinances which authorized health, fire and building inspectors to enter upon premises during daylight hours for the purpose of conducting inspections to determine whether such premises complied with the applicable regulations and which imposed a fine upon an owner or occupier who refused to allow such inspection. Two of the ordinances, which were substantially identical with section 503 of the Housing Code, contained no requirement of probable cause to suspect the existence of a nuisance and authorized representatives of the Building Inspection Engineer and the Chief Engineer of the Fire Department to enter "any building, structure or premises" during daylight hours "for the purpose of performing his duties" under the code.

Defendant Givner, who was convicted of violating these ordinances, contended on appeal that they were prohibited by the due process clause of the federal Constitution and by an article of the state Constitution which the court characterized as being *in pari materia* with the Fourth Amendment of the federal Constitution. After discussing the Little case at length, the court chose not to follow its reasoning and overruled the constitutional objections to [fol. 92] the ordinances on the ground that the inspections or searches authorized by said ordinances were not "unreasonable." Although the court expressed doubt that either the federal or state prohibitions against unreasonable searches and seizures could be deemed inapplicable in civil matters, the court nevertheless concluded that different standards of reasonableness applied to a search for evidence to prove guilt of a crime than to an inspection for

the purpose of protecting the public health or safety. Since the inspections authorized by the ordinances under attack were of a routine nature, which were to be made at reasonable hours and were primarily for protective and not punitive purposes, they could not be deemed unreasonable and could lawfully be made without search warrant.

In Frank v. Maryland (1959) 359 U.S. 360, the United States Supreme Court, in a five-to-four decision, upheld the validity of one of the three Baltimore inspection ordinances involved in the Givner case. However, the ordinance in question was the most narrowly drawn of the three and authorized the Commissioner of Health to demand entry to any house, cellar or enclosure, during daylight hours, only if he "shall have cause to suspect that a nuisance exists" therein. The ordinance imposed a $20 fine upon any owner or occupier who refused or delayed to allow such entry and submit to the inspection.

Defendant Frank was convicted of violating said ordinance after he refused to allow an inspection by a health official who was acting upon a neighbor's complaint of rats and who had observed that the defendant's house was in an extreme state of decay and that a large quantity of straw and debris containing rat feces was located at the [fol. 93] rear of the house.

Frank's conviction was affirmed by the United States Supreme Court in a majority opinion delivered by Mr. Justice Frankfurter, with whom Mr. Justice Clark, Mr. Justice Harlan and Mr. Justice Stewart concurred (Mr. Justice Whittaker specially concurring by way of clarification of the rule adopted by the majority). The court concluded that although the right to be secure from an invasion of personal privacy was protected by the Fourth Amendment, as applied to the states through the Fourteenth Amendment, the primary purpose of the Fourth Amendment was to safeguard the right to be secure from searches for evidence to be used in criminal prosecutions or for forfeitures. The court noted that under the Baltimore City Code,

an occupant who had failed to maintain a building in hygienic condition was notified to abate the sub-standard conditions and was subjected to criminal prosecution only in default of such correction. The attempted inspection of Frank's house was accordingly for the purpose of ascertaining evils to be corrected and not for the purpose of securing evidence upon which a criminal prosecution could be based. Since the Baltimore ordinance authorized such an inspection only during reasonable hours and upon valid grounds for suspicion of the existence of a nuisance, the court concluded that Frank's resistance could only have been based upon a denial of any official justification for entry to his home. Such right was upon the periphery of the important interests safeguarded by the Fourth and Fourteenth Amendments and was outweighed by the city's vital need to maintain adequate standards of health.

Since the Baltimore ordinance, unlike section 503 of the [fol. 94] Housing Code, contained a requirement of probable cause for an inspection, the majority opinion in the Frank case clearly does not establish the validity of section 503. However, the majority opinion in Frank does contain certain language indicating that an ordinance authorizing routine, periodic inspections, for which probable cause might obviously be lacking, would similarly be immune to constitutional attack. The court stated: "Time and experience have forcefully taught that the power to inspect dwelling places, either as a matter of systematic area-by-area search or, as here, to treat a specific problem, is of indispensable importance to the maintenance of community health; a power that would be greatly hobbled by the blanket requirement of the safeguards necessary for a search of evidence of criminal acts. The need for preventive action is great, and city after city has seen this need and granted the power of inspection to its health officials; and these inspections are apparently welcomed by all but an insignificant few." (Frank v. Maryland, supra, at p. 372.)

Mr. Justice Douglas, with whom Chief Justice Warren, Mr. Justice Black and Mr. Justice Brennan concurred, wrote a dissenting opinion in which he expressed the view that a health official was not entitled, under the Fourth and Fourteenth Amendments, to enter a private dwelling without first having secured a warrant upon a showing of probable cause to make an inspection.

In State v. Price (1958) 151 N.E.2d 523, a case decided one year prior to Frank v. Maryland, supra, the Ohio Supreme Court upheld the validity of a Dayton ordinance which was substantially identical with section 503 of the Housing Code in that it contained no requirement of [fol. 95] probable cause and authorized the Housing Inspector to make inspections to determine the condition of dwellings, dwelling units, rooming houses, rooming units and premises within the city "in order that he may perform his duty of safeguarding the health and safety of the occupants of dwellings and of the general public." The ordinance required owners or occupants of such premises to allow entry for such inspection at any reasonable hour. Any person violating the ordinance was subject to fine, imprisonment, or both.

Defendant was convicted of violating said ordinance by refusing to admit a housing inspector to his premises.

The Ohio Supreme Court upheld the ordinance and the conviction was affirmed. The court concluded that the Fourth Amendment of the federal Constitution was inapplicable to the states and that the applicable provision of the state Constitution did not prohibit a reasonable search such as that authorized by the Dayton ordinance. The court, in so holding, commented at length upon the decision of the federal circuit court of appeals in District of Columbia v. Little, supra, but chose to follow Givner v. State, supra, and the views expressed by the Holtzoff dissent in the Little case.

The decision in State v. Price, supra, was appealed to the United States Supreme Court, which noted probable

jurisdiction of the appeal, by a vote of four to four, less than one month after it had decided Frank v. Maryland, supra. (Ohio ex rel. Eaton v. Price (1959) 360 U.S. 246.)[2] Since the United States Supreme Court was equally divided, [fol. 96] the case was not taken over by that court and the judgment of the Ohio Supreme Court was not affected.

The most recent decision dealing with the validity of an inspection ordinance is City of St. Louis v. Evans (1960) 337 S.W.2d 948. The ordinance in that case authorized the building commissioner or his authorized agent to enter any structure or portion thereof when necessary in the performance of duty at any time between 9:00 a.m. and 6:00 p.m. or at any time it was necessary in his opinion. The ordinance further provided that if the right of entry were denied, the official might invoke the aid of the police department in order to gain such entry. Another ordinance designated as a misdemeanor offense hindering, obstructing, resisting or otherwise interfering with a city officer in the discharge of his official duties. Defendants Evans and Hourigan, the caretaker and the owner of a rooming house, refused to allow a city building inspector to enter certain portions of the building to ascertain whether they were being used in accordance with an existing occupancy permit and persisted in such refusal even after the inspector had enlisted the aid of a police officer. The two defendants were subsequently charged with a violation of the ordinance. Although the trial court entered judgment dismissing the prosecution and discharging the defendants, said judgment was reversed by the Missouri Supreme

[2] Since Mr. Justice Stewart's father was a member of the Ohio Supreme Court and had participated in the decision in State v. Price, supra, he disqualified himself from sitting on the case. (Ohio ex rel. Eaton v. Price, supra, at p. 249.) The four Justices who had dissented in Frank v. Maryland, supra, voted to note probable jurisdiction of the Price appeal, and the four who comprised the majority in Frank expressed the view that that case was completely controlling of the Price case. (Ohio ex rel. Eaton v. Price, supra.)

Court, which held that neither of the above-mentioned ordinances violated the privileges and immunities, equal protection or due process clauses of the Fourteenth Amendment [fol. 97] to the federal Constitution or certain provisions of the state Constitution which prohibited unreasonable searches, self-incrimination and double jeopardy. The court pointed out, however, that since neither Evans nor Hourigan resided in the portion of the premises which the inspector sought to enter, the facts presented no issue as to their right of personal privacy or private residence.

We are persuaded that the reasoning of the authorities upholding the constitutionality of this type of inspection statute should be followed by this court. As we have noted, with the sole exception of the federal circuit court of appeals which decided District of Columbia v. Little, supra, the constitutionality of ordinances similar to section 503 of the Housing Code have been upheld. We believe that such a result is an eminently reasonable one and that it is urgent in this day of the megalopolis that citizens be protected from conditions deleterious to their health and welfare, and that this right to protection should not be deemed subordinate to the individual's right to resist any official infringement, however reasonable, upon the ground of absolute privacy of his dwelling.

The Housing Code, of which section 503 is a part, commences with section 101, wherein "[i]t is found and declared that there exist in the City and County of San Francisco substandard and insanitary residential buildings and dwelling units whose physical conditions and characteristics render them unfit or unsafe for human occupancy and habitation, and which conditions and characteristics are such as to be detrimental to or jeopardize the health, safety, and welfare of their occupants and of the public." [fol. 98] "It is further found and declared that the existence of such substandard, insanitary, obsolete and deficient buildings and dwelling units threatens the physical, social and economic stability of sound residential buildings and

areas, and of their supporting neighborhood facilities and institutions; necessitates disproportionate expenditures of public funds for remedial action; impairs the efficient and economical exercise of governmental powers and functions; and destroys the amenity of residential areas and neighborhoods and of the community as a whole.

"For these reasons it is hereby declared to be the policy of the City and County of San Francisco:

"1. That it is in the public interest of the people of San Francisco to protect and promote the existence of sound and wholesome residential buildings, dwelling units and neighborhoods by the adoption and enforcement of such standards, regulations and procedures as will remedy the existence or prevent the development or creation of dangerous, substandard, insanitary or obsolete and deficient residential buildings and dwelling units. . . ."

The purpose of the Housing Code, as set forth in section 103, "is to provide minimum requirements for the protection of life, limb, health, property, safety, and welfare of the general public and the owners and occupants of residential buildings, erected or to be erected in San Francisco. . . ."

Section 503 of said code, which authorizes certain city officials to enter and inspect buildings and other structures within the city, requires that any such inspection be made in the course of official duty, at reasonable hours and only [fol. 99] upon presentation of proper credentials.

If such inspection should result in a finding that any building or portion thereof is substandard, the owner is directed to remedy the defective condition, under section 505, and may appeal such order to the Housing Appeals Board, under section 1706. A penalty is imposed upon the owner, pursuant to section 507, only if he neglects or refuses to comply with the order of correction.

We conclude, from an examination of the above-quoted provisions, that section 503 is part of a regulatory scheme

which is essentially civil rather than criminal in nature, inasmuch as that section creates a right of inspection which is limited in scope and may not be exercised under unreasonable conditions.

The ordinance is thus no broader in scope than those upheld in Givner v. State, supra; State v. Price, supra; and City of St. Louis v. Evans, supra; and plaintiff's constitutional objections must fail.[3]

The order appealed from is affirmed.

Shoemaker, P. J.

We Concur: Agee, J., Taylor, J.

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[3] It may be noted that plaintiff places considerable emphasis upon the fact that the ordinance authorizes an inspection without any showing of probable cause. However, the facts in the present case fall short of establishing that the attempted inspection of plaintiff's apartment was not based upon such a showing. Although the petition alleged that the inspection was routine in nature and was not occasioned by any complaint concerning the premises, the answer directly controverts this allegation. Plaintiff thereafter elected to stand upon the assertion that the ordinance was unconstitutional on its face. The instant case is therefore factually indistinguishable in this respect from the Givner, Price and Evans cases.

[fol. 100]

Order Due
November 19, 1965

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

CAMARA

v.

THE MUNICIPAL COURT OF THE CITY & COUNTY OF SAN FRANCISCO

ORDER DENYING HEARING AFTER JUDGMENT BY DISTRICT COURT OF APPEAL

1st District, Division 2,

Civ. No. 22128

Petition for hearing Denied.

Peters, J., and Peek, J., are of the opinion that the petition should be granted.

Traynor, Chief Justice.

[fol. 101]

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT, DIVISION TWO

No. 22128

ROLAND CAMARA, Plaintiff and Appellant,

vs.

MUNICIPAL COURT OF THE CITY AND COUNTY OF SAN FRANCISCO, Defendant and Respondent.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed December 20, 1965

Notice is hereby given that Roland Camara, plaintiff and appellant in the above case, hereby appeals to the Supreme Court of the United States from the final judgment of the District Court of Appeal of the State of California, First Appellate District, Division Two, affirming the judgment of the Superior Court of the State of California in and for [fol. 102] the City and County of San Francisco, filed and entered in this proceeding on September 22, 1965.

This appeal is taken pursuant to 28 U.S.C. sec. 1257(2) and this notice is filed pursuant to Rules 10 and 11 of the Revised Rules of the Supreme Court of the United States. The Clerk of this Court is requested to prepare a transcript of the record of this case for transmission to the Clerk of the Supreme Court of the United States, at the Supreme Court Building, Washington, D. C., and include in the transcript certified copies of the following:

(1) The opinion of the District Court of Appeal, filed September 22, 1965.

(2) The order denying a hearing in the Supreme Court of the State of California.

(3) The Clerk's Transcript.

(4) The Reporter's Transcript.

(5) One copy of the briefs filed by the parties including the appellant's petition for a hearing by the Supreme Court.

(6) The order allowing the record to be augmented by the Housing Code of the City and County of San Francisco.

(7) The Housing Code of the City and County of San Francisco.

(8) This Notice of Appeal.

The following questions are presented by this appeal:

[fol. 103] (1) Whether section 503 of the Housing Code of the City and County of San Francisco, which authorizes City employees to inspect private dwellings without warrant or the existence of probable cause for such inspection, and section 507 of the Housing Code which provides a criminal penalty for failure to allow such inspections, are unconstitutional as authorizing an unreasonable search forbidden by the Fourth and Fourteenth Amendments to the Constitution of the United States.

(2) Whether sections 503 and 507 of the Housing Code are unconstitutional as allowing a search for criminal evidence without warrant, arrest or emergency in violation of the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States.

(3) Whether sections 503 and 507 of the Housing Code are unconstitutional under the doctrine of *Griswold* v. *Connecticut*, —— U.S. ——, 14 L.Ed.2d 510 (1965) protecting the right of privacy.

Dated: December 17, 1965.

Marshall W. Krause, Attorney for Appellant.

[fol. 104] Proof of Service (omitted in printing).

[fol. 105]

EXCERPTS FROM SECTIONS FROM THE SAN FRANCISCO HOUSING CODE, CHAPTER XII OF SAN FRANCISCO MUNICIPAL CODE

Sec. 101. Declaration of Policy. It is found and declared that there exist in the City and County of San Francisco substandard and insanitary residential buildings and dwelling units whose physical conditions and characteristics [fol. 106] render them unfit or unsafe for human occupancy and habitation, and which conditions and characteristics are such as to be detrimental to or jeopardize the health, safety, and welfare of their occupants and of the public.

It is further found and declared that there exist in the City and County of San Francisco residential buildings and dwelling units which were legally constructed according to standards now generally recognized to be obsolete and deficient in terms of current, modern housing standards for construction, use, occupancy, light and ventilation and sanitary facilities. The continued existence of these obsolete and deficient residential buildings and dwelling units is detrimental to or jeopardizes the health, safety, and welfare of their occupants and of the public.

It is further found and declared that the existence of such substandard, insanitary, obsolete and deficient buildings and dwelling units threatens the physical, social and economic stability of sound residential buildings and areas, and of their supporting neighborhood facilities and institutions; necessitates disproportionate expenditures of public funds for remedial action; impairs the efficient and economical exercise of governmental powers and functions; and destroys the amenity of residential areas and neighborhoods and of the community as a whole.

For these reasons it is hereby declared to be the policy of the City and County of San Francisco:

1. That it is in the public interest of the people of San Francisco to protect and promote the existence of sound

[fol. 107] and wholesome residential buildings, dwelling units and neighborhoods by the adoption and enforcement of such standards, regulations and procedures as will remedy the existence or prevent the development or creation of dangerous, substandard, insanitary or obsolete and deficient residential buildings and dwelling units.

2. That the adoption and enforcement of a Housing Code is a necessary municipal governmental function in the interest of the health, safety, and welfare of the people of San Francisco.

Sec. 103. Purpose. The purpose of this Code is to provide minimum requirements for the protection of life, limb, health, property, safety, and welfare of the general public and the owners and occupants of residential buildings, erected or to be erected in San Francisco. In case of any conflict between the provisions of this Code and the Municipal Code, the most restrictive shall govern.

Sec. 203.3. Ceiling. The undersurface of the overhead covering of a room.

Ceiling Height. The distance between the finished floor and the finished ceiling.

Cellar. Cellar means any portion of a building or structure with a ceiling any part of which is less than seven (7) feet above the actual adjoining ground levels.

Chief, Division of Fire Prevention and Investigation. The Chief Division of Fire Prevention and Investigation—City and County of San Francisco.

[fol. 108] City and County. City and County of San Francisco.

Closet. A non-habitable space having less than the minimum required floor area or other legal requirements of a habitable room.

Conservation. Area. Conservation area shall mean an area in the City and County which is to be protected from blighting influences and maintained in a safe and sound state or, in a declining area, improved and preserved from further deterioration. Such an area shall consist of at least one block within which planned area inspection is necessary to promote the public safety, health, and welfare. Upon recommendation of the Director of Planning such areas may be designated by the Chief Administrative Officer.

Court. Any space on a lot other than a yard which, from a point not more than two (2) feet above the floor line of the lowest story in the building on the lot in which there are windows from rooms abutting and served by the court, is open and unobstructed to the sky, except for projections permitted by this Code.

Outer Court. A court, one entire side or ends of which is bounded by a front yard, a rear yard, a side yard, a front of lot, a street, or a public alley.

Inner court. Any court which is not an outer court.

Sec. 203.16. Pantry. A space accessible to a dining room or kitchen for the storage of food, dishes or utensils.

Partition. An interior vertical separation running from floor to ceiling and dividing one part of an enclosure from another.

[fol. 109] Person. Any person, firm, association, organization, partnership, business trust, corporation, company, municipal, state or federal agency, executors, administrators, successors, assigns or agents or their heirs.

Planned area inspection. Planned area inspection shall mean the inspection of all residential buildings within a rehabilitation area or conservation area for the purpose of determining all violations of this Code and the elimination of all such violations in accordance with this Code.

It shall also mean a study to determine whether conditions in any area of the city involve aspects of urban renewal as defined in this Code.

Planning Code. The San Francisco City Planning Code, Chapter II, Part II, of the San Francisco Municipal Code.

Plumbing and Gas Appliance Code. The San Francisco Plumbing and Gas Appliance Code, Chapter VII, Part II, of the San Francisco Municipal Code.

Porch. A porch is a projection or appendage on the exterior of a building which has a roof, the ceiling height of which cannot be less than seven (7) feet. The roof may be supported on the porch floor structure, on an independent foundation, or be cantilevered from the building. Where one balcony is placed one story above another balcony, the construction constitutes a roofed porch.

Premises. Land including improvements or appurtenances or any part thereof.

[fol. 110] Sec. 203.18. Rehabilitation area. Rehabilitation area shall mean an area of the City and County in which deteriorated structures, neighborhoods, and public facilities are to be improved or restored to good condition by repair, renovation, conversion, remodeling, reconstruction, or the addition of needed improvements. A rehabilitation area as herein defined may or may not be within an area designated as an urban renewal area or a redevelopment area under the provisions of the Community Redevelopment Law of the State of California. Such an area shall consist of at least one block within which planned area inspection is necessary to promote the public safety, health, and welfare. Upon recommendation of the Director of Planning such areas may be designated by the Chief Administrative Officer.

Repairs. The reconstruction or renewal of any part of an existing building for the purpose of its maintenance.

Required. As required in this Code.

Rooming house. Same as Lodging house.

Sec. 203.21. Urban renewal. Urban renewal means undertakings and activities for the elimination and for the prevention of the development or spread of blighted areas, and may involve any redevelopment work or undertaking or any rehabilitation and conservation, or any combination or part of such undertaking or work.

Use. Use shall mean used or designed or intended to be used.

[fol. 111]

ARTICLE 5

ENFORCEMENT

Sec. 501. Enforcement.

(a) Within a rehabilitation area.

(b) Outside of a rehabilitation area.

Sec. 502. Order of vacation.

Sec. 503. Right to enter building.

Sec. 504. Stopping construction.

Sec. 505. Abatement or repairs.

(a) Within a rehabilitation area.

(b) Outside of a rehabilitation area—Director of Public Works.

(c) Outside of rehabilitation area—Director of Public Health.

Sec. 506. Posted notice, interference with.

Sec. 507. Penalty for violation.

Sec. 501. Enforcement.

(a) Within a rehabilitation area or conservation area. Within a rehabilitation area or conservation area the Director of Public Works through the Superintendent, shall administer and enforce all of the provisions of this Code. The Superintendent is hereby designated as the authorized representative of the Director of Public Works in such enforcement. The Superintendent is hereby authorized to call upon the Director of City Planning, the Director of [fol. 112] Public Health, the Chief of the Fire Department, the Chief of Police and all other city officers, employees, departments and bureaus to aid and assist him in such enforcement, and it shall then be their duty to enforce the provisions of this Code, and to perform such duties, as may come within their respective jurisdictions.

(b) Outside of a rehabilitation area or conservation area. Outside of a rehabilitation area or conservation area this Code shall be enforced as follows:

1. The Director of Public Works, in addition to his other enforcement duties, shall enforce all of the provisions of this Code pertaining to the construction, erection, remodeling, alteration, repairing, maintenance, use, moving and removal of buildings or parts thereof.

2. The Director of Public Health, in addition to his other enforcement duties, shall enforce all of the provisions of this Code, pertaining to maintenance, sanitation, ventilation, use and occupancy of residential buildings.

3. The Chief, Division of Fire Prevention and Investigation, in addition to his other enforcement duties, shall enforce all of the provisions of this Code pertaining to fire prevention, fire spread control, and the protection of persons and property from the hazard of fire, explosion or panic.

Sec. 502. Order of vacation. The Director of Public Works or Director of Public Health, within their respective

jurisdictions, shall give written notification of any order [fol. 113] to vacate to the Chief of Police who shall thereupon cause the same to be executed and enforced.

Sec. 503. Right to enter building. Authorized employees of the City departments or City agencies, so far as may be necessary for the performance of their duties, shall, upon presentation of proper credentials, have the right to enter, at reasonable times, any building, structure, or premises in the City to perform any duty imposed upon them by the Municipal Code.

Sec. 504. Stopping construction. The Superintendent shall have the power to stop the construction, alterations or repairs or moving of any structure when, in his opinion, such work is being done in a dangerous, reckless or careless manner, or in violation of any of the provisions of this Code, or upon complaint by any City department or agency, and to order all work stopped. The work shall be stopped immediately and shall not be resumed without authorization from the Superintendent.

Sec. 505. Abatement or repair.

(a) Within a rehabilitation area or conservation area.

1. General. All buildings or portions thereof within a rehabilitation area or conservation area which are substandard as set forth in Article 6 of this Code are hereby declared to be public nuisances and shall be caused to be abated or repaired by the Director of Public Works as hereinafter provided.

2. Complaints. The Superintendent shall examine, or cause to be examined, every building or structure, or [fol. 114] portion thereof, coming within the provisions of subsection 1, next above, and if he finds it to be a substandard building, he shall file written complaint with the Director of Public Works which shall contain specific allegations setting forth the conditions complained of.

3. Procedure. Any building or portion thereof within a rehabilitation area or conservation area which is found by the Director of Public Works to be substandard as defined in Article 6 of this Code shall be repaired and rehabilitated, or vacated, demolished and removed in accordance with the procedure set forth in Section 804, subsections (c), (d), (e), (f), (g), (h) and (i) of the Building Code, and as otherwise provided in this Code. (See also Article 17.)

(b) Outside of a rehabilitation area or conservation area, Director of Public Works.

All dwellings or portions thereof outside of a rehabilitation area, or conservation area, which are substandard as set forth in Article 6 of this Code are hereby declared to be public nuisances and the Director of Public Works, upon finding that any building or portion thereof outside a rehabilitation area or conservation area is substandard shall cause it to be repaired and rehabilitated, or vacated, demolished and removed, in accordance with the procedure set forth in Section 804, subsections (b), (c), (d), (e), (f), (g), (h) and (i) of the Building Code.

Outside of a rehabilitation area or conservation area, the owner of a one or two family dwelling built under a lawful permit and subsequently maintained only for such [fol. 115] residential uses, may appeal to the Board of Examiners under the provisions of Section 806(a) of the Building Code on matters relating to the interpretations of the orders by the Director of Public Works as to compliance with the provisions of this Code which establishes the building as substandard. The Board of Examiners may exercise the powers granted to them in paragraphs 2 and 3 of subsection (a) of Section 806 in relation to variances from the provisions of this Code.

(c) Outside of rehabilitation area or conservation area, Director of Public Health.

All apartment houses and hotels, or portions thereof outside of a rehabilitation area or conservation area, which

are substandard because of reasons stated in Sections 602, 611 and 615 of this Code are hereby declared to be public nuisances, and the Director of Public Health, upon finding that any building or portion thereof outside a rehabilitation area or conservation area is substandard because of "inadequate sanitation" as defined in Sections 602, 611 and 615 of this Code shall cause it to be repaired and rehabilitated, or vacated, demolished and removed, in accordance with the procedure set forth in Sections 596 to 600 of the Health Code and this Code.

Sec. 506. Posted notices, interference with. It shall be unlawful for any person to interfere with the posting of any notice provided for in this Code, or to tear down or mutilate any such notice so posted in or upon any building [fol. 116] or premises by the Department of Public Works, the Department of Public Health or any other interested department or bureau.

Sec. 507. Penalty for violation. Any person, the owner or his authorized agent who violates, disobeys, omits, neglects, or refuses to comply with, or who resists or opposes the execution of any of the provisions of this Code, or any order of the Superintendent, the Director of Public Works, or the Director of Public Health made pursuant to this Code, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars ($500.00), or by imprisonment, not exceeding six (6) months or by both such fine and imprisonment, unless otherwise provided in this Code, and shall be deemed guilty of a separate offense for every day such violation, disobedience, omission, neglect or refusal shall continue. Any person who shall do any work in violation of any of the provisions of this Code, or any order of the Superintendent, the Director of Public Works, or the Director of Public Health made pursuant to this Code, and any person having charge of such work who shall permit it to be done, shall be liable to the penalty provided.

[fol. 117]

ARTICLE 6

SUBSTANDARD BUILDING

Sec. 601. Standard building defined.
Sec. 602. Inadequate sanitation and safety.
Sec. 603. Structural unsoundness.
Sec. 604. Nuisance.
Sec. 605. Hazardous wiring—insufficient outlets.
Sec. 606. Hazardous plumbing.
Sec. 607. Hazardous mechanical equipment.
Sec. 608. Faulty weather protection.
Sec. 609. Fire nuisance.
Sec. 610. Faulty materials of construction.
Sec. 611. Hazardous or insanitary premises.
Sec. 612. Inadequate maintenance.
Sec. 613. Inadequate exits.
Sec. 614. Inadequate fire protection or fire fighting equipment.
Sec. 615. Improper occupancy.

Sec. 601. Substandard building defined. Any residential building or portion thereof including any dwelling unit, guest room or suite of rooms, or the premises on which the same is located, in which there exists any of the conditions enumerated in this Article to an extent that endangers the life, limb, health, property, safety, or welfare of the public or the occupants thereof shall be deemed and hereby is declared to be a substandard building.

[fol. 118] Buildings built under, and in full compliance with, the codes in force at the time of construction or alteration of the building and that have been properly maintained and used for only such use as originally permitted, shall be exempt from the declaration as substandard buildings insofar as paragraph (i) of Section 602 applies.

Sec. 602. Inadequate sanitation and safety, including:

(a) Lack of, or improper water closet, lavatory, bath tub or shower in a dwelling unit.

(b) Lack of, or improper water closets, lavatories, and bath tubs or showers per number of guests in an hotel.

(c) Lack of, or improper kitchen sink in a dwelling unit.

(d) Lack of hot and cold running water to plumbing fixtures in an hotel or lodging house.

(e) Lack of hot and cold running water to plumbing fixtures in a dwelling unit.

(f) Lack of adequate heating facilities or improper operation thereof.

(g) Lack of, or improper operation of required ventilating equipment.

(h) Lack of minimum amounts of natural light and ventilation required by this Code.

(i) Room and space dimensions less than required by this Code.

(j) Lack of required electrical illumination.

[fol. 119] (k) Dampness of habitable rooms.

(l) Infestation of insects, vermin or rodents.

(m) General dilapidation or improper maintenance creating an unsafe condition.

(n) Lack of connection to required sewage disposal system.

(o) Lack of adequate garbage and rubbish storage and removal facilities.

Sec. 603. Structural unsoundness. All structural elements that do not conform with all applicable laws in effect at the time of installation or the laws in effect at the time of any subsequent extensive alterations or reconstruction, or those which have not been maintained in good and safe condition. It shall include the following:

(a) Deteriorated or inadequate foundations.

(b) Defective or deteriorated flooring or floor supports.

(c) Flooring or floor supports of insufficient size to carry imposed loads with safety.

(d) Members of walls, partitions, or other vertical supports that split, lean, list or buckle due to defective material or deterioration.

(e) Members of walls, partitions, or other vertical supports that are of insufficient size to carry imposed loads with safety.

(f) Members of ceilings, roofs, ceiling and roof supports or other horizontal members which sag, split, or buckle due to defective material or deterioration.

[fol. 120] (g) Members of ceilings, roofs, ceiling and roof supports, or other horizontal members that are of insufficient size to carry imposed loads with safety.

(h) Fireplaces or chimneys which list, bulge, or settle, due to defective material or deterioration.

(i) Fireplaces or chimneys which are of insufficient size or strength to carry imposed loads with safety.

Sec. 604. Nuisance. Any nuisance as defined in this Code. (See also Section 203.14.)

Sec. 605. Hazardous wiring—Insufficient outlets.

(a) All wiring except that which conformed with all applicable laws in effect at the time of installation or the laws in effect at the time of any subsequent extensive alterations and which has been maintained in good condition and is being used in a safe manner.

(b) Habitable rooms and kitchens with insufficient number of electrical convenience outlets as required by Section 708 of this Code.

Sec. 606. Hazardous plumbing. All plumbing except that which conformed with all applicable laws in effect at the time of installation or the laws in effect at the time of any subsequent extensive alterations and which has been maintained in good condition and which is free of cross connections and siphonage between fixtures.

Sec. 607. Hazardous mechanical equipment. All mechanical equipment, including vents, except that which conformed [fol. 121] with all applicable laws in effect at the time of installation or the laws in effect at the time of any subsequent extensive alterations and which has been maintained in good and safe condition.

Sec. 608. Faulty weather protection.

(a) Deteriorated, crumbling, or loose plaster.

(b) Deteriorated or ineffective waterproofing or weather protection of exterior walls, roof, foundations, or floors, including broken windows or doors.

(c) Broken, rotted, split, or deteriorated exterior wall or roof covering.

Sec. 609. Fire hazard or nuisance. Means anything or any act which increases or may cause an increase of the hazard or menace of fire to a greater degree than that customarily recognized as normal by persons in the public service of preventing, suppressing, or extinguishing fire; or which may obstruct, delay, or hinder, or may become the

cause of an obstruction, a delay, or a hindrance to the prevention, suppression, or extinguishment of fire.

Sec. 610. Faulty materials of construction. All materials of construction except those which are specifically allowed or approved by the Building Code, and which have been adequately maintained in good and safe condition.

Sec. 611. Hazardous or insanitary premises. Those premises on which an accumulation of weeds, vegetation, junk, dead organic matter, debris, garbage, offal, rat har- [fol. 122] borages, stagnant water, combustible materials, and similar materials or conditions, constitute fire, health, or safety hazards.

Sec. 612. Inadequate maintenance. Any building or portion thereof which is determined to be an unsafe building in accordance with Section 804(a) of the Building Code.

Sec. 613. Inadequate exits. All buildings or portions thereof not provided with adequate exit facilities as required by this Code. When it is determined by the Superintendent and Bureau of Fire Prevention and Public Safety an unsafe condition exists through lack of or improper location of exits, additional exits may be required to be installed as set forth in the Building Code.

Sec. 614. Inadequate fire protection or fire-fighting equipment. All buildings or portions thereof which are not provided with the fire-resistive construction or fire-extinguishing systems or equipment required by this Code.

Sec. 615. Improper occupancy. All buildings or portions thereof occupied for living, sleeping, cooking or eating purposes which were not designed or intended to be used for such occupancies.

[fol. 123]

ARTICLE 16

MAINTENANCE, SANITATION AND REPAIR

Sec. 1601. Painting.
Sec. 1602. Courts and shafts.
Sec. 1603. Wallpaper.
Sec. 1604. Garbage receptacles.
Sec. 1605. Garbage receptacle compartment.
Sec. 1606. Automatic sprinklers.
Sec. 1607. Sanitation.
Sec. 1608. Deposit of rubbish, etc.
Sec. 1609. Bedding.
Sec. 1610. Towels.
Sec. 1611. Dangerous articles.
Sec. 1612. Caretaker.
Sec. 1613. Artificial light.

Sec. 1601. Painting. The walls and ceiling of every sleeping room in an apartment house or hotel, unless there is sufficient natural light to permit a person to read in any part of the room during the day, shall be painted, or papered with a light-colored material. The paint, or paper shall be applied as often as may be necessary to maintain the walls and ceiling in a light color and clean and free from vermin.

Sec. 1602. Courts and shafts. Unless built of light-colored materials, the walls of courts and shafts shall be [fol. 124] painted in a light color. The paint shall be ap-

plied as often as may be necessary to maintain the walls in a light color.

Sec. 1603. Wallpaper. Not more than two thicknesses of wallpaper shall be placed upon any wall, partition, or ceiling of any room in any apartment house or hotel. If any wall, partition, or ceiling with two thicknesses of wallpaper in any such room is to be repapered, the old wallpaper shall be first removed. Painting over wallpaper is permissible.

Sec. 1604. Garbage receptacles. Such number of tight metal receptacles with close-fitting metal covers for garbage, refuse, ashes, and rubbish as may be considered necessary by the enforcement agency, or an approved garbage chute or shaft, shall be provided for every building. Each receptacle, chute, or shaft shall be kept in a clean condition by the following persons:

1. In the case of a receptacle in an apartment house or dwelling, by the occupants or tenants of the building.

2. In the case of a receptacle in an hotel, by the owner or person in charge of the hotel.

3. In the case of a chute or shaft in any building, by the person in charge or in control of the building.

Sec. 1605. Garbage receptacle compartment. Every closet or compartment in a building used for storing a garbage receptacle shall be lined on all its sides and on the inside of all its doors with galvanized iron, with all joints made tight.

[fol. 125] Sec. 1606. Automatic sprinklers. Standard automatic sprinklers shall be installed in:

1. All garbage and trash chutes.

2. All laundry chutes except for dwellings.

3. All garbage, trash and soiled linen rooms or compartments.

Sec. 1607. Sanitation. Each room, hallway, passageway, stairway, wall, partition, ceiling, floor, skylight, glass window, door, carpet, rug, matting, window curtain, water-closet compartment or room, toilet room, bathroom, slop-sink room, wash room, plumbing fixture, drain, roof, closet, cellar, basement, yard, court, lot, and the premises of every building shall be kept in every part clean, sanitary, and free from all accumulation of debris, filth, rubbish, garbage, vermin, and other offensive matter.

Sec. 1608. Deposit of rubbish, etc. No person shall do, or permit or cause another person to do, any of the following:

1. Deposit any swill, garbage, bottles, ashes, cans, or other improper substances in, or in any way obstruct, any water-closet, sink, slop hopper, bathtub, shower, catch-basin, or plumbing fixture connection or drain.

2. Put any filth, urine, or foul matter in any place other than the place provided for it.

3. Keep any filth, urine, or other foul matter in any room, or elsewhere in or about the premises, of any build-[fol. 126] ing for such length of time as will result in the creation of a nuisance.

Sec. 1609. Bedding. In every apartment house or hotel every part of every bed, including the mattress, sheets, blankets, and bedding, shall be kept in a clean, dry and sanitary condition, free from filth, urine, or other foul matter, and from the infestation of lice, bedbugs, or other insects. The bed linen of a bed in an hotel shall be changed as often as a new guest occupies the bed.

Sec. 1610. Towels. No roller or public towel shall be kept or maintained in an hotel for common use.

Sec. 1611. Dangerous articles. Neither any article that is dangerous nor detrimental to life or to the health of the occupants; nor any feed, hay, straw, excelsior, cotton, paper

stock, rags, junk, or any material that may create a fire hazard, shall be kept, stored or handled in any part of an apartment house or hotel, or the lot on which such building is situated, except upon a written permit obtained from the officer or agency authorized by law to issue the permit. Every permit shall be made in duplicate, and a copy shall remain on file in the office of the officer or agency issuing it. Every filed copy constitutes a public record.

Sec. 1612. Caretaker. A janitor, housekeeper, or other responsible person shall reside upon the premises and shall have charge of every apartment house in which there are [fol. 127] sixteen or more apartments, and of every hotel in which there are twelve or more guest rooms, in the event that the owner of any such apartment house or hotel does not reside upon said premises. If the owner does not reside upon the premises of any apartment house in which there are more than four but less than sixteen apartments, a notice stating his name and address, or the name and address of his agent in charge of the apartment house, shall be posted in a conspicuous place on the premises.

Sec. 1613. Artificial light. In every apartment house and in every hotel there shall be installed and kept burning throughout the year artificial light sufficient in volume to illuminate properly every public hallway, passageway, public stairway, fire escape egress, elevator, public water closet compartment, or toilet room, in any part of which there is insufficient natural light to permit a person to read.

[fol. 128]

ARTICLE 17

HOUSING APPEALS BOARD

Sec. 1701. Establishment.
Sec. 1702. Membership.
Sec. 1703. Powers of the Board.
Sec. 1704. Procedure.
Sec. 1705. Quorum.
Sec. 1706. Appeals.
Sec. 1707. Hearings.
Sec. 1708. Compensation.

Sec. 1701. Establishment. There is hereby established a Housing Appeals Board consisting of five members who are residents of the City and County of San Francisco and who are qualified by training and experience to pass upon matters pertaining to housing and the health, safety and welfare of the public. None of the members, except the ex-officio members, shall be a public employee.

Sec. 1702. Membership. The members of the Board shall be appointed by the Chief Administrative Officer, and each member shall hold office for four years or until his successor is qualified and appointed, provided however, that those first appointed shall so classify themselves by lot that their several terms shall expire two at the end of one year and one each at the end of two, three and four years respectively, from the date of appointment of the original Board.

[fol. 129] The following shall constitute ex-officio members of the Board without vote: Director of Planning, the Coordinator or the Associate Coordinator of Urban Renewal.

The Urban Renewal Analyst of the Bureau of Building Inspection shall act as Secretary to the Board.

Sec. 1703. Powers of the Board. The Board shall have the power to hear and decide appeals from orders of condemnation or abatement after public hearing, by the Director of Public Works or the Director of Public Health, as the case may be, made pursuant to Section 505 of this Code.

The Board may affirm, modify or reverse such orders provided that the public health, safety and welfare is secured and substantial justice done most nearly in accordance with the intent and purpose of this Code.

Sec. 1704. Procedure. The Board shall establish reasonable rules and regulations for its own procedures consistent with the provisions of this Code and the City Charter. The Board, by majority vote, shall choose its officers other than the Secretary.

Sec. 1705. Quorum. Four members of the Board shall constitute a quorum. Any action of the Board shall require the concurrence of not less than three members. No member of the Board shall pass upon any case of which he or any corporation of which he is a shareholder, is interested.

[fol. 130] Sec. 1706. Appeals. Any person may appeal from orders of condemnation or abatement after public hearing by the Director of Public Works or Director of Public Health, as the case may be, made pursuant to Section 505 of this Code and shall, at the hearings provided for in Section 505 of this Code, be apprised of his right of appeal to the Housing Appeals Board provided the appeal is made in writing and filed with the Secretary within ten days after such orders of the Director of Public Works or Director of Public Health, as the case may be.

Sec. 1707. Hearings. Hearings of the Board shall be held at the call of the Secretary of the Board and at such times as the Board may determine. All hearings of the

Board shall be public hearings. The Board shall fix the time and place of hearing, not less than five days or more than ten days after the filing of the appeal and shall act on such appeal not later than thirty days after the date on which appeal was filed with the Board. The Board shall submit its findings and decision to the appellant and the Director of Public Works or the Director of Public Health. If the Board has not acted within the time prescribed in this section, the orders of the Director of Public Works or the Director of Public Health, as the case may be, become immediately effective.

The Board shall hear the appellant, a representative of the department from whose action the appeal is taken and other interested parties.

[fol. 131] Sec. 1708. Compensation. The members of this Board shall receive no compensation but shall be allowed necessary actual travel and other expenses when the interest of the City shall require it but in each case, only if and when the Board of Supervisors shall have first specifically authorized the purpose and expenditures involved.

[fol. 132] SUPREME COURT OF THE UNITED STATES

No. 92, October Term, 1966

ROLAND CAMARA, Appellant,

v.

MUNICIPAL COURT OF THE CITY AND COUNTY OF SAN FRANCISCO.

Appeal from the District Court of Appeal of the State of California, First Appellate District.

ORDER NOTING PROBABLE JURISDICTION—October 10, 1966

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is placed on the summary calendar.